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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES HOUSE OF
REPRESENTATIVES,

Plaintiff,

v.

STEVEN T. MNUCHIN in his official capacity as
Secretary of the Department of Treasury, *et al.*,

Defendants.

Civil Action No. 1:19-cv-00969 (TNM)

DEFENDANTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

The House of Representatives asks this Court to enter a preliminary injunction barring the Executive Branch from using two statutes to fund and construct barriers along the southern border of the United States. But this Court need not and cannot reach the merits of the House’s claims because it lacks jurisdiction over this inter-branch dispute. *See Raines v. Byrd*, 521 U.S. 811 (1997). One House of Congress may not ask an Article III court to issue an injunction against the Executive Branch preventing it from implementing a statute. This litigation between the political branches is “obviously not the regime that has obtained under our Constitution to date.” *Id.* at 828.

Disagreements between the Executive and Legislative Branches are routine, but with only a few modern, erroneous examples they have always been resolved by the political branches—each of which possesses “the necessary constitutional means and personal motives to resist encroachments of the other[].” *The Federalist* No. 51 (James Madison). That history reflects the bedrock separation-of-powers principles embodied in Article III’s case-or-controversy requirement and the “restricted role for Article III courts,” *Raines*, 521 U.S. at 828, which the Constitution gave “no influence over either the sword or the purse” and which the framers left to “take no active resolution whatever.” *The Federalist* No. 78 (Alexander Hamilton). As the Court of Appeals and the Supreme Court have accordingly made clear, the House’s belief that the Executive Branch is improperly executing a federal statute does not supply Article III standing or create a case or controversy fit for judicial resolution. Federal courts do not sit to referee institutional disputes “between one or both Houses of Congress and the Executive Branch . . . on the basis of claimed injury to official authority or power.” *Raines*, 521 U.S. at 826. The House’s motion thus cannot be reconciled with the structure of the Constitution, controlling precedent, and historical practice. To hold otherwise and address the merits of the House’s motion would

“improperly and unnecessarily plunge[]” the Judiciary into a host of disputes between the political branches. *Id.*

In addition to lacking standing and an actual Article III controversy, the House does not possess a cause of action. Congress knows how to provide an express cause of action for legislators and has done so on certain occasions, but not for the type of action the House brings here. In the absence of an express cause of action, the Court should hold that this is not “a proper case” to provide the “judge-made remedy” of an implied cause of action to enjoin alleged violations of the Appropriations Clause by agency officials. *Armstrong v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378, 1384 (2015). Moreover, the availability of such equitable relief depends on whether it “was traditionally accorded by courts of equity” and there is no historical tradition of courts enjoining the Executive Branch at the request of one House of Congress. *Grupo Mexicano De Desarrollo*, 527 U.S. 308, 319 (1999). Nor is there any basis to recognize a cause of action for the House under the Administrative Procedure Act (APA), which would be contrary to longstanding doctrines that prevent chambers of Congress from bringing suit under statutes of general applicability that confer a cause of action on private parties to challenge agency action.

But even if the House could overcome these fundamental issues, it still cannot establish a likelihood of success on the merits. The House alleges Defendants are funding border barriers in violation of the Appropriations Clause, but the House’s constitutional claims are unlikely to succeed because they contravene the principle that “claims simply alleging that the President has exceeded his statutory authority are not ‘constitutional’ claims.” *Dalton v. Specter*, 511 U.S. 462, 473 (1994). The dispute here is entirely about statutory issues regarding the Department of Defense’s (DoD) use of § 8005 of the DoD Appropriations Act for Fiscal Year 2019, 10 U.S.C. § 284, and 10 U.S.C. § 2808 to fund border barrier construction. Disagreements about whether

Executive action is authorized by, or consistent with, statutory authority do not raise distinct constitutional issues. And on the merits of these statutory issues, the House has not established a violation of the statutory language in § 8005 or § 284, while with respect to § 2808, the House lacks standing for the additional reason that the Acting Secretary of Defense has not yet decided to undertake or authorize any barrier construction projects under § 2808.

There is no serious dispute that the southern border is “a major entry point for criminals, gang members, and illicit narcotics.” Declaring a Nat’l Emergency Concerning the S. Border of the United States, Pres. Proc. No. 9844, 84 Fed. Reg. 4949 (Feb. 15, 2019) (Proclamation). The increasing surge of migrants, the highest in over a decade, has placed a tremendous strain on the limited resources of the Department of Homeland Security (DHS) and exacerbated the risks to border security, public safety, and the safety of the migrants themselves. *See* Letter from Secretary of Homeland Security Kirstjen M. Nielsen to the United States Senate and House of Representatives (Mar. 28, 2019) (Nielsen Letter) (Exhibit 1). Border barriers have historically proven to be an extremely effective tool for deterring and impeding illegal crossings into the United States. *See* Declaration of Jerry B. Martin, Chief of U.S. Border Patrol Strategic Planning and Analysis Directorate (Exhibit 2). A preliminary injunction would interfere with the Executive’s ability to use its statutory authorities to respond to these concerns and harm the Executive’s strong interest in border security and enforcement of counter-drug and immigration laws.

For these reasons, the House’s motion for a preliminary injunction should be denied.

BACKGROUND

I. Congress’s Express Authorization of Border Barrier Construction

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which authorizes the Secretary of Homeland Security to “take such actions as may

be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States.” Pub. L. No. 104-208, Div. C., Title I § 102(a), 110 Stat. 3009 (1996) (codified at 8 U.S.C. § 1103 note). Since then, Congress has amended IIRIRA three times to expand the Executive’s authority to construct barriers along the southern border. In 2005, Congress grew frustrated by “[c]ontinued delays caused by litigation” preventing border barrier construction and granted the Secretary of Homeland Security authority to waive any “laws that might impede the expeditious construction of security infrastructure along the border.” *See* H.R. Rep. 109-72, at 171 (May 3, 2005). The REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, Title I § 102, 119 Stat. 231, 302, 306, empowers the Secretary of Homeland Security “to waive all legal requirements such Secretary, in such Secretary’s sole discretion, determines necessary to ensure expeditious construction of the barriers and roads under this section.”

Congress amended IIRIRA again as part of the Secure Fence Act of 2006, requiring construction of “physical barriers, roads, lights, cameras, and sensors” across hundreds of miles of the southern border in five specified locations. Pub. L. No. 109-367, § 3, 120 Stat. 2638. In 2007, Congress expanded this requirement and directed “construct[ion of] reinforced fencing along not less than 700 miles of the southwest border.” Pub. L. No. 110-161, Div. E, Title V § 564, 121 Stat. 1844 (2007) (IIRIRA § 102(b)).

Relying on these authorities, DHS has installed approximately 650 miles of barriers along the southern border. *See* Senate Appropriations Hr’g on the DHS FY 2018 Budget, 2017 WL 2311065 (May 25, 2017) (Test. of then-DHS Secretary John Kelly). Courts have consistently denied relief in cases challenging construction of barriers under IIRIRA. *See, e.g., In re Border Infrastructure Envtl. Litig.*, 915 F.3d 1213 (9th Cir. 2019); *N. Am. Butterfly Ass’n v. Nielsen*, 2019

WL 634596 (D.D.C. Feb. 14, 2019); *Save Our Heritage Org. v. Gonzalez*, 533 F. Supp. 2d 58 (D.D.C. 2008); *Defs. of Wildlife v. Chertoff*, 527 F. Supp. 2d 119 (D.D.C. 2007).

II. DHS's Recent Efforts to Expedite Border Barrier Construction

On January 25, 2017, the President issued an Executive Order directing federal agencies “to deploy all lawful means to secure the Nation’s southern border.” Border Security and Immigration Enforcement Improvements, Exec. Order No. 13767, 82 Fed. Reg. 8793 (Jan. 25, 2017). In order to “prevent illegal immigration, drug and human trafficking, and acts of terrorism,” *id.*, the Order required agencies to “take all appropriate steps to immediately plan, design and construct a physical wall along the southern border,” including to “[i]dentify and, to the extent permitted by law, allocate all sources of Federal funds” to that effort. *Id.* at 8794. In furtherance of this directive DHS has issued waivers pursuant to IIRIRA to expedite construction of border barrier projects over the past two years, including two recent waivers for projects in Arizona and New Mexico, the funding for which the House challenges in this case. *See, e.g.*, Determinations Pursuant to Section 102 of IIRIRA, as Amended, 83 Fed. Reg. 17185-88 (April 24, 2019).

III. Congress's Authorization for DoD Support of DHS's Border Security Efforts

Congress also has expressly authorized DoD to provide a wide range of support to DHS at the southern border, including the “construction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States.” 10 U.S.C. § 284(b)(7); *see id.* §§ 271-84 (authorizing DoD to provide various forms of assistance to civilian law enforcement agencies). Since the early 1990s, military personnel have supported civilian law-enforcement agency activities to secure the border, counter the spread of illegal drugs, and respond to transnational threats. *See* H. Armed Servs. Comm. Hr’g on S. Border Defense Support (Jan. 29, 2019) (Joint Statement of John Rood, Under Secretary of Defense for Policy, and Vice Admiral Michael Gilday, Director of Operations for the Joint Chiefs of Staff) (Exhibit 3). More recently,

Presidents George W. Bush and Barack Obama deployed military personnel to the southern border to support DHS's border security efforts. *Id.*

For decades, U.S. military forces have played an active role in barrier construction and reinforcement on the southern border. Military personnel were critical to construction of the first modern border barrier near San Diego, California in the early 1990s as well as other border fence projects. *See* H.R. Rep. No. 103-200, at 330-31, 1993 WL 298896 (1993) (commending DoD for its role in construction of the San Diego primary fence); Hr'g Before the S. Comm. on Armed Servs. Subcomm. on Emerging Threats and Capabilities, 1999 WL 258030 (Apr. 27, 1999) (Test. of Barry R. McCaffrey, Dir. of the Office of Nat'l Drug Control Policy) (military personnel constructed over 65 miles of barrier fencing). In 2006, the National Guard improved the southern border security infrastructure by building more than 38 miles of fence, 96 miles of vehicle barrier, and more than 19 miles of new all-weather road, and performing road repairs exceeding 700 miles. *See* Joint Statement of Rood and Gilday. More recently, the U.S. Army Corps of Engineers has assisted DHS by providing planning, engineering, and barrier construction support. *See, e.g., Gringo Pass, Inc. v. Kiewit Sw. Co.*, 2012 WL 12905166, at *1 (D. Ariz. Jan. 11, 2012).

IV. DoD's Current Support for DHS's Efforts to Secure the Southern Border

On April 4, 2018, the President issued a memorandum to the Secretary of Defense, Secretary of Homeland Security, and the Attorney General titled, "Securing the Southern Border of the United States." Presidential Memorandum, 2018 WL 1633761 (Apr. 4, 2018). The President stated "[t]he security of the United States is imperiled by a drastic surge of illegal activity on the southern border" and pointed to the "anticipated rapid rise in illegal crossings," as well as "the combination of illegal drugs, dangerous gang activity, and extensive illegal immigration." *Id.* at *1. The President determined the situation at the border had "reached a point of crisis" that "once again calls for the National Guard to help secure our border and protect our homeland." *Id.*

To address this crisis, the President directed the Secretary of Defense to support DHS in “securing the southern border and taking other necessary actions to stop the flow of deadly drugs and other contraband, gang members and other criminals, and illegal aliens into this country.” *Id.* at *2. The President also directed the Secretary of Defense to request the use of National Guard personnel to assist in fulfilling this mission. *Id.* In October 2018, the President expanded the military’s support to DHS to include active duty military personnel. *See* Joint Statement of Rood and Gilday. Over the course of the last year, military personnel have provided a wide range of border security support to DHS, including hardening U.S. ports of entry, erecting temporary barriers, and emplacing concertina wire. *See id.*

V. The President’s Proclamation Declaring a National Emergency

On February 15, 2019, the President issued a proclamation declaring that “a national emergency exists at the southern border of the United States.” *See* Proclamation. The President determined that “[t]he current situation at the southern border presents a border security and humanitarian crisis that threatens core national security interests and constitutes a national emergency.” *Id.* The President explained:

The southern border is a major entry point for criminals, gang members, and illicit narcotics. The problem of large-scale unlawful migration through the southern border is long-standing, and despite the executive branch’s exercise of existing statutory authorities, the situation has worsened in certain respects in recent years.

Id. “Because of the gravity of the current emergency situation,” the President determined that “this emergency requires use of the Armed Forces” and “it is necessary for the Armed Forces to provide additional support to address the crisis.” *Id.*

To achieve its purpose, the Proclamation makes available to the Acting Secretary of Defense the authority under 10 U.S.C. § 2808, which provides that, “without regard to any other provision of law,” the Secretary of Defense “may undertake military construction projects, and

may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces.” *See id.*; 10 U.S.C. § 2808(a).

On March 15, 2019, the President vetoed a joint resolution passed by Congress that would have terminated the President’s national emergency declaration. *See* Veto Message for H.J. Res. 46, 2019 WL 1219481 (Mar. 15, 2019). The President relied upon statistics published by U.S. Customs and Border Protection (CBP) as well as recent congressional testimony by the Secretary of Homeland Security to reaffirm that a national emergency exists along the southern border. *See id.* The President highlighted (1) the recent increase in the number of apprehensions along the southern border, including 76,000 CBP apprehensions in February 2019; (2) CBP’s seizure of more than 820,000 pounds of drugs in 2018; and (3) arrests in fiscal years 2017 and 2018 of 266,000 aliens previously charged with or convicted of crimes. *See id.* The President also emphasized that migration trends along the southern border have changed from primarily single adults from Mexico, who could be easily removed upon apprehension, to caravans that include record numbers of families and unaccompanied children from Central America. *See id.* The President explained that this shift requires frontline border enforcement personnel to divert resources away from border security to humanitarian efforts and medical care. *See id.* Further, the President stated that criminal organizations are taking advantage of the large flows of families and unaccompanied minors to conduct a range of illegal activity. *See id.* With additional surges of migrants expected in the coming months, the President stated that border enforcement personnel and resources are strained “to the breaking point.” *See id.* The President concluded that the “situation on our border cannot be described as anything other than a national emergency, and our Armed Forces are needed to help confront it.” *See id.*

The situation at the southern border has continued to deteriorate, and DHS is facing “a system-wide meltdown.” *See* Nielsen Letter (Exhibit 1). “DHS facilities are overflowing, agents and officers are stretched too thin, and the magnitude of arriving and detained aliens has increased the risk of life threatening incidents.” *Id.* In March 2019, there were over 103,000 apprehensions of undocumented migrants along the southern border, the highest one-month total in over a decade. *See* DHS Southwest Border Migration Statistics FY 2019 (Exhibit 4); U.S. Border Patrol Apprehension Statistics Since FY 2000 (Exhibit 5). Over 92,000 of these apprehensions were between ports of entry, compared with 66,884 in February and 47,984 in January. *See* CBP Transcript March FY19 Year to Date Statistics (Exhibit 6); Exhibit 4.¹

VI. Spending Authorities for Border Barrier Construction

On the same day the President issued the Proclamation, the White House publicly released a fact sheet announcing the sources of funding to be used to construct additional barriers along the southern border. In addition to the \$1.375 billion appropriation to DHS as part of the Consolidated Appropriations Act, 2019 (CAA), *see* Pub. L. No. 116-6, § 230, 133 Stat. 13 (2019), the fact sheet identifies three additional sources of funding, which it explains will be used sequentially and as needed: (1) About \$601 million from the Treasury Forfeiture Fund; (2) Up to \$2.5 billion of DoD funds transferred for support for counterdrug activities (10 U.S.C. § 284); and (3) Up to \$3.6 billion reallocated from DoD military construction projects for military construction pursuant to 10 U.S.C. § 2808, a construction authority made available by the President’s declaration of a national emergency. *See* President Donald J. Trump’s Border Security Victory (Feb. 15, 2019) (Exhibit 7). The House’s motion challenges only the funding under § 284 and § 2808. *See* U.S. House of

¹ The Court may take judicial notice of the official U.S. Government documents and the publicly available information cited herein and attached. *See Dinh Tran v. Dep’t of Treasury*, 351 F. Supp. 3d 130, 133 n.5 (D.D.C. 2019); *Al-Aulaqi v. Panetta*, 35 F. Supp. 3d 56, 67 (D.D.C. 2014).

Representative’s Appl. For Prelim. Inj. (House Mot.) at 6, ECF No. 17.

A. Congress’s Appropriations to DHS for Border Barriers in the CAA

The CAA, signed into law on February 15, 2019, consolidated separate appropriations acts for different federal agencies into one bill, including the DHS Appropriations Act for Fiscal Year 2019. *See* Pub. L. 116-6, div. A. As relevant here, § 230 appropriated \$1.375 billion to CBP “for the construction of primary pedestrian fencing, including levee pedestrian fencing, in the Rio Grande Valley Sector.” *See id.* § 230(a)(1). Congress placed three restrictions on the use of these funds. First, Congress mandated that border barriers constructed in this area “shall only be available for operationally effective designs . . . such as currently deployed steel bollard designs that prioritize agent safety.” *Id.* § 230(b). Second, Congress imposed a restriction stating that “none of the funds made available by this Act or prior Acts are available for the construction of pedestrian fencing” within five specified areas within the Rio Grande Valley Sector. *See id.* § 231 (listing various locations including “the National Butterfly Center” and “Santa Ana Wildlife Refuge”). Third, Congress imposed advance notice and consultation requirements on CBP in the event barrier construction occurs within five designated cities or census designated places. *See id.* § 232. In appropriating these funds to CBP, Congress did not modify any other law or impose a general appropriations restriction that would prevent other government agencies from invoking their preexisting statutory authorities or funding to engage in border barrier construction.

B. 10 U.S.C. § 284 & § 8005 of the DoD Appropriations Act

10 U.S.C. § 284 authorizes DoD to provide “support for the counterdrug activities . . . of any other department or agency of the Federal Government,” including for “[c]onstruction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States.” *Id.* § 284(a); (b)(7). Congress first provided DoD this authority in the National Defense Authorization Act for Fiscal Year 1991. Pub. L. No. 101-510, § 1004,

104 Stat. 1485 (1990). Congress regularly renewed § 1004 and praised DoD’s involvement in building barrier fences along the southern border. *See* Nat’l Def. Authorization Act for FY 1994, H.R. Rep. No. 103-200, at 330-31, 1993 WL 298896 (1993) (House Armed Services “commends” DoD’s efforts to reinforce the border fence along a 14-mile drug smuggling corridor in “the San Diego-Tijuana border area”); H.R. Rep. No. 110-652, 420 (2008) (describing border fencing as an “invaluable counter-narcotics resource” and recommending a \$5 million increase to DoD’s budget to continue construction); *see also* Hr’g Before the S. Comm. on Armed Servs. Subcomm. on Emerging Threats and Capabilities, 1999 WL 258030 (Apr. 27, 1999) (Testimony of Barry R. McCaffrey, Director of the Office of National Drug Control Policy) (testifying about the “vital contributions” made by DoD to construct 65 miles of barrier fencing, 111 miles of roads, and 17 miles of lighting “to support the efforts of law enforcement agencies operating along the Southwest Border”). In light of the threat posed by illegal drug trafficking, Congress permanently codified § 1004 at 10 U.S.C. § 284 in December 2016, directing DoD “to ensure appropriate resources are allocated to efforts to combat this threat.” H.R. Rep. No. 114-840, 1147 (2016).

In accordance with § 284, on February 25, 2019, DHS requested DoD’s assistance in blocking 11 specific drug-smuggling corridors on federal land along certain portions of the southern border. *See* Declaration of Kenneth Rapuano ¶ 3, Ex. A (Exhibit 8). The request sought the replacement of existing vehicle barricades or dilapidated pedestrian fencing with new pedestrian fencing, the construction of new and improvement of existing patrol roads, and the installation of lighting. *Id.* On March 25, 2019, the Acting Secretary of Defense approved two projects in Arizona and one in New Mexico. *Id.* ¶¶ 4, 7-9 (describing details and locations of the projects). DoD has awarded contracts to support these projects and construction will begin no sooner than May 25, 2019. *Id.* ¶¶ 9-10.

In September 2018, Congress appropriated \$517 million for DoD's counter-narcotics support activities for Fiscal Year 2019, to include projects undertaken pursuant to § 284. *See* Dep't of Def. and Labor, HHS, and Educ. Appropriations Act 2019 and Continuing Appropriations Act, 2019, Pub. L. 115-245, Title VI, 132 Stat. 2981 (2018). In order to devote additional resources to border barrier construction, on March 25, 2019, the Acting Secretary of Defense authorized the transfer of \$1 billion to the counter-narcotics support appropriation from Army personnel funds that had been identified as excess to current requirements. *See* Rapuano Decl. ¶ 5. The Acting Secretary of Defense directed the transfer of funds pursuant to DoD's general transfer authority under § 8005 of the DoD Appropriations Act for Fiscal Year 2019, Pub. L. 115-245, div. A, 132 Stat. 2981, 2999 (Sept. 28, 2018), which provides in relevant part:

Upon determination by the Secretary of Defense that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, transfer not to exceed \$4,000,000,000 of working capital funds of the Department of Defense or funds made available in this Act to the Department of Defense for military functions (except military construction) between such appropriations or funds or any subdivision thereof, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: *Provided*, That such authority to transfer may not be used unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by the Congress[.]

The Acting Secretary concluded the requirements of this provision were satisfied because the transfer of funds was “for higher priority items, based on unforeseen military requirements, than those for which originally appropriated” and “the item for which funds are requested” had not “been denied by the Congress.” *See* Rapuano Decl. ¶ 5.

The transfer authority in § 8005 has been available to DoD in substantially the same form since the fiscal year 1974 Defense Appropriations Act. *See* Pub. L. 93-238, § 735, 87 Stat. 1076 (Jan. 2, 1974). Congress added this provision to provide DoD with reprogramming flexibility in

light of the recognition that “plans do change and an operation as large as the Department of Defense must have financial flexibility during a given year” while also seeking to “tighten congressional control of the re-programming process.” H. Rep. 93-662, at 16-17 (Nov. 26, 1973). Congress made these amendments in response to incidents in which “the Department [of Defense] has requested that funds which have been specifically deleted in the legislative process be restored through the reprogramming process.” *Id.* at 16. The “denied by Congress” provisions were inserted to communicate to DoD that “henceforth no such requests will be entertained.” *Id.*

C. 10 U.S.C. § 2808

First enacted as part of the 1982 Military Construction Authorization Act, Pub. L. No. 97-99, § 903, 95 Stat. 1359 (1981), and later amended by the Military Construction Codification Act of 1982, Pub. L. No. 97-214, § 2, 96 Stat. 153 (codifying 10 U.S.C. §§ 2801–08), 10 U.S.C. § 2808(a) provides:

In the event of a declaration of war or the declaration by the President of a national emergency in accordance with the National Emergencies Act (50 U.S.C. 1601 et seq.) that requires use of the armed forces, the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces. Such projects may be undertaken only within the total amount of funds that have been appropriated for military construction, including funds appropriated for family housing, that have not been obligated.

In enacting this provision, Congress recognized that “it is impossible to provide in advance for all conceivable emergency situations” and wanted to fill “a gap that now exists with respect to restructuring construction priorities in the event of a declaration of war or national emergency.” H.R. Rep. No. 97-44, at 72 (1981).

The term “military construction” as used in § 2808 “includes any construction, development, conversion, or extension of any kind carried out with respect to a military installation, whether to satisfy temporary or permanent requirements, or any acquisition of land or

construction of a defense access road (as described in section 210 of title 23).” 10 U.S.C. § 2801(a). Congress in turn defined the term “military installation” as “a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department.” *Id.* § 2801(c)(4); *see also id.* § 2801(a) (defining “military construction project”).

Presidents have invoked the military construction authority under § 2808 on two prior occasions. First, President George H.W. Bush authorized the use of § 2808 in 1990 following the Government of Iraq’s invasion of Kuwait. *See* Exec. Order No. 12722, 55 Fed. Reg. 31803 (Aug. 2, 1990); Exec. Order No. 12734, 55 Fed. Reg. 48099 (Nov. 14, 1990). Second, President George W. Bush invoked § 2808 in response to the terrorist attacks against the United States on September 11, 2001. *See* Proc. No. 7463, 66 Fed. Reg. 48199 (Sept. 14, 2001); Exec. Order No. 13235, 66 Fed. Reg. 58343 (Nov. 16, 2001). The national emergency declaration stemming from the terrorist attacks of September 11, 2001, remains in effect today, *see* 83 Fed. Reg. 46067 (Sept. 10, 2018), and DoD has used its § 2808 authority to build a wide variety of military construction projects, both domestically and abroad, over the past 17 years, *see* Cong. Research Serv., Military Construction Funding in the Event of a National Emergency at 1–3 & tbl. 1 (updated Jan. 11, 2019) (listing projects worth \$1.4 billion between 2001 and 2014).

Here, the Acting Secretary of Defense has not yet decided to undertake or authorize any barrier construction projects under § 2808. *See* Rapuano Decl. ¶¶ 14, 15. DoD is currently undertaking an internal review process to inform any decision by the Acting Secretary of Defense, including assessments by the Chairman of the Joint Chiefs of Staff and the DoD Comptroller that are due to the Acting Secretary by May 10, 2019. *See id.*

THE HOUSE’S CLAIMS

The House initiated this action on April 5, 2019. *See* Compl., ECF No. 1. Approximately two weeks later, on April 23, 2019, the House filed the motion for preliminary injunction presently

before the Court. *See* ECF No. 17. The motion seeks injunctive relief on two separate claims. *See* House Mot. at 1; Proposed Order. First, the House seeks to enjoin the use of any money transferred pursuant to § 8005 for purposes of border barrier construction under § 284. The House does not challenge the authority of the Executive to build border fencing under § 284, nor does the House contest that DoD may use appropriated funds for § 284 fence construction. *See* House Mot. at 30. Rather, the House’s motion is directed solely against the use of § 8005 to transfer additional money into the counter-narcotics-support appropriation from which § 284 fence construction is funded. *See id.* Second, the House seeks an injunction prohibiting DoD from using § 2808 for any border barrier construction. The House does not challenge the President’s declaration of a national emergency pursuant to the National Emergencies Act, 50 U.S.C. § 1601 *et seq.*—a necessary prerequisite for invoking § 2808. *See* House Mot. at 34. Instead, the House contends that DoD has not satisfied other requirements of § 2808. *See id.*

LEGAL STANDARD

A preliminary injunction is an “extraordinary and drastic remedy” that is “never awarded as of right.” *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008). A preliminary injunction “may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A plaintiff seeking a preliminary injunction must show that (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Id.* at 20. The Court of Appeals has emphasized that the “first and most important factor” is whether the moving party has “established a likelihood of success on the merits.” *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014). “When a plaintiff has not shown a likelihood of success on the merits, [we need not] consider the other factors.” *Greater New*

Orleans Fair Hous. Action Ctr. v. HUD, 639 F.3d 1078, 1088 (D.C. Cir. 2011). The Supreme Court has also instructed that a preliminary injunction cannot issue on the basis of speculative or possible injury. Rather, the moving party must establish that irreparable harm is “*likely* in the absence of an injunction.” *Winter*, 555 U.S. at 22.² For the reasons discussed below, the House cannot meet this heavy burden.

ARGUMENT

I. The House Lacks Standing to Maintain This Action.

The House’s claim that a single House of Congress can invoke the jurisdiction of an Article III court to resolve a disagreement between the political branches over the Executive’s exercise of statutory authority is irreconcilable with the “restricted role for Article III courts” in our constitutional structure and history. *Raines*, 521 U.S. at 828. The Framers predicted that the political branches would disagree—indeed, they counted on it—and thus gave Congress and the Executive the necessary tools to resolve those disagreements themselves. But nowhere does the Constitution contemplate Article III courts resolving these inter-branch disputes. Rather, it makes clear that the duty of Article III courts is to resolve cases or controversies instigated by a party suffering particularized and legally cognizable injury. Supreme Court and D.C. Circuit precedent accordingly establish that the harm asserted by the House—an alleged dilution of its legislative

² In *Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011), the Court of Appeals noted that *Winter* called into question the “sliding-scale approach” to consideration of the preliminary injunction factors that had been the law of this Circuit. The Court read “*Winter* at least to suggest if not to hold that a likelihood of success is an independent, free-standing requirement for a preliminary injunction” such that a “movant cannot obtain a preliminary injunction without showing both a likelihood of success and a likelihood of irreparable harm.” *Id.* at 393; *see BHM Healthcare Sols., Inc. v. URAC, Inc.*, 320 F. Supp. 3d 1, 7 (D.D.C. 2018). Noting a split among the circuits on the interpretation of *Winter*, the Court of Appeals held that it did not need to resolve the question because the movant in *Sherley* failed to establish an entitlement to a preliminary injunction under the “less demanding sliding-scale” approach. *Id.* This Court need not address this issue here, as the House’s claims for relief fail under either standard.

authority—is not a judicially cognizable injury sufficient to confer Article III standing. Were the Court to conclude otherwise, it would vastly expand the role of Article III courts and upend the constitutional design by conscripting courts as the umpires of endless political battles between Congress and the Executive.

A. The House Fails to Allege a Judicially Cognizable Injury.

Article III of the Constitution limits federal courts’ jurisdiction to certain “Cases” and “Controversies.” The Supreme Court has explained that “[n]o principle is more fundamental to the judiciary’s proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 408 (2013) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006)). “One element of the case-or-controversy requirement” is that all plaintiffs “must establish that they have standing to sue.” *Raines*, 521 U.S. at 818. “The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches.” *Clapper*, 568 U.S. at 408; *see Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 135 S. Ct. 2652, 2695 (2015) (Scalia, J., dissenting) (“[T]he law of Art. III standing is built on a single basic idea—the idea of separation of powers.”). The Supreme Court has “always insisted on strict compliance with this jurisdictional standing requirement.” *Raines*, 521 U.S. at 819. Indeed, because the relaxation of the standing requirement “is directly related to the expansion of judicial power,” *Clapper*, 568 U.S. at 408–09, the inquiry is “especially rigorous” where, as here, “reaching the merits of the dispute would force [an Article III court] to decide” a claim alleging that action “taken by one of the other two branches of the Federal Government was unconstitutional,” *id.* at 409 (quoting *Raines*, 521 U.S. at 819–20).

To establish “the irreducible constitutional minimum” of Article III standing, a plaintiff

must show an injury in fact that is fairly traceable to the defendant’s challenged actions and likely to be redressed by the requested relief. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). As the Supreme Court has stressed, in a case involving the standing of federal legislators, an asserted injury does not constitute an Article III injury-in-fact unless it is “legally and judicially cognizable.” *Raines*, 521 U.S. at 819. “This requires, among other things, that the plaintiff have suffered an invasion of a legally protected interest which is concrete and particularized, and that the dispute is traditionally thought to be capable of resolution through the judicial process.” *Id.* (citations, quotation marks, and ellipsis omitted); *see also Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 102 (1998) (“We have always taken [Article III’s case-or-controversy requirement] to mean cases and controversies of the sort traditionally amenable to[,] and resolved by[,] the judicial process.”). *Raines* further emphasized that to demonstrate Article III standing a plaintiff must allege a “*personal injury*” demonstrating “that he has a ‘personal stake’ in the alleged dispute” such that the alleged harm is “particularized as to him.” *Raines*, 521 U.S. at 818-20.

Here, the asserted basis of the House’s suit is the allegation that Defendants’ exercise of their authority under § 8005 and § 2808 to further barrier construction projects at the southern border does not “comply with Congress’s specific statutory limitations.” House Mot. at 29. The House claims these alleged statutory violations usurp its constitutional appropriations authority, causing institutional harm to the House, *id.* at 23, and putting it “at a severe disadvantage within our system of government,” *id.* at 24. As further explained below, the “institutional injury” alleged by the House does not meet Article III standing requirements.

1. *Raines* Rejected the Standing of Legislators to Sue for Official-Capacity Injuries In All But the Narrowest of Circumstances.

As the Supreme Court held in *Raines*, a “dilution of institutional legislative power” is not a “personal, particularized, concrete, [or] otherwise judicially cognizable” injury sufficient to

establish Article III standing. 521 U.S. at 820, 826. In *Raines*, individual Members of Congress brought suit to challenge the Line Item Veto Act, which gave the President the authority to cancel spending provisions in an appropriations bill without vetoing the bill in its entirety. The Members argued that the Act altered “the legal and practical effect” of their votes on “bills containing such separately vetoable items,” depriving them of “their constitutional role in the [legislative process],” and “alter[ing] the constitutional balance of powers between the Legislative and Executive Branches.” *Id.* at 816. The district court held that the Members had standing under D.C. Circuit precedent, which “ha[d] repeatedly recognized Members’ standing to challenge measures that affect their constitutionally prescribed lawmaking powers.” *Id.* The Supreme Court reversed on direct appeal.³

Although the Court acknowledged that a legislator could sue for any injury that resulted in the loss of a “private right” (like a salary), *id.* at 821, it found that the Members’ claimed “institutional injury” of “the diminution of legislative power” was “wholly abstract and widely dispersed” because the injury “necessarily damage[d] all Members of Congress and both Houses of Congress equally.” *Id.* at 829. The Court held that, in such circumstance, the Members “d[id] not have a sufficient ‘personal stake’ in th[e] dispute,” *id.* at 830 (citation omitted), as the “loss of political power” was not claimed in a “private capacity” but was “solely because they are Members of Congress,” *id.* at 821. “If one of the Members were to retire tomorrow,” the Court said, “he would no longer have a claim; the claim would be possessed by his successor instead.” *Id.*; *see also Nev. Comm’n on Ethics v. Carrigan*, 564 U.S. 117, 126 (2011) (“The legislative power thus committed is not personal to the legislator but belongs to the people; the legislator has no personal

³ Although the Members had statutory authority to bring suit, the Court held that the statutory grant of authority “eliminate[d] any prudential standing limitations” but “[could] not erase Article III’s standing requirements.” *Raines*, 521 U.S. at 820 n.3.

right to it.”). As the Court explained, the alleged injury essentially “runs . . . with the Member’s seat, a seat which the Member holds . . . as a trustee for his constituents, not as a prerogative of personal power.” *Raines*, 521 U.S. at 821.

The Court further determined that the dispute at issue was not “traditionally . . . capable of resolution through the judicial process.” *Id.* at 819; *see also Spokeo*, 136 S. Ct. at 1547 (the Article III standing doctrine was developed “to ensure that federal courts do not exceed their authority as it has been traditionally understood”); *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 227 (1974) (“Our system of government leaves many crucial decisions to the political processes.”). “It is evident from several episodes in our history,” the Court observed, “that in analogous confrontations between one or both Houses of Congress and the Executive Branch, no suit was brought on the basis of claimed *injury to official authority or power*.” *Raines*, 521 U.S. at 826 (emphasis added); *see also United States v. Windsor*, 570 U.S. 744, 790 (2013) (Scalia, J., dissenting on the merits, with no majority opinion on the standing issue) (“The opinion [in *Raines*] spends three pages discussing famous, decades-long disputes between the President and Congress . . . that would surely have been promptly resolved by a Congress-vs.-the-President lawsuit if the impairment of a branch’s powers alone conferred standing to commence litigation. But it does not, and never has[.]”).

Indeed, *Raines* acknowledged a single exception to the general principles prohibiting legislative standing—*Coleman v. Miller*, 307 U.S. 433 (1939). *Raines*, 521 U.S. at 821. In *Coleman*, the Supreme Court held that state legislators who challenged a tie-breaking vote by the state lieutenant governor to ratify a proposed amendment to the U.S. Constitution had asserted an institutional injury that was sufficient to confer Article III standing. *Id.* at 822. *Raines* emphasized, however, the narrowness of *Coleman*’s holding, clarifying that “at most” it stood for the

proposition that “legislators whose votes would have been sufficient to defeat (or enact) a specific legislative act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified.” *Id.* at 823. It also made sure to highlight that *Coleman* involved “state legislators,” *id.* at 821, and it specifically did not determine that *Coleman* had any “applicability to a similar suit brought by federal legislators,” *id.* at 824 n.8.

2. The D.C. Circuit Has Confirmed the Narrowness of Legislative Standing.

Following *Raines*, the D.C. Circuit similarly held that Members of Congress have no standing to challenge Executive action on the basis of claimed injury to their legislative powers. In *Chenoweth v. Clinton*, several Members brought suit to challenge President Clinton’s American Heritage Rivers Initiative after unsuccessful legislative efforts to prevent the program’s implementation. 181 F.3d 112, 113 (D.C. Cir. 1999). The Members claimed that the President’s establishment of the program through an Executive Order “deprived them of their constitutionally guaranteed responsibility of open debate and vote on issues and legislation” involving the program. *Id.*; *see id.* at 116 (“[The Members’] injury, they say, is the result of the President’s successful effort ‘to usurp Congressional authority by implementing a program, for which [he] has no constitutional authority, in a manner contrary to the Constitution.’”). The D.C. Circuit held that the alleged injury to the Members’ “authority as legislators” was “identical to the injury the Court in *Raines* deprecated as ‘widely dispersed’ and ‘abstract.’” *Id.* at 115 (quoting *Raines*, 521 U.S. at 816). If, as in *Raines*, a statute that allegedly divests the Members of their “constitutional role in the [legislative process]” does not give them standing to sue, the D.C. Circuit reasoned, “then neither does an Executive Order that allegedly deprives congressmen of their right to participate and vote on legislation in a manner defined by the Constitution.” *Id.* (quotations and alteration

omitted); *see id.* at 116 (recognizing *Raines*’s “narrow interpretation” of *Coleman*).

The D.C. Circuit reached a similar conclusion in *Campbell v. Clinton*, 203 F.3d 19 (D.C. Cir. 2000). In *Campbell*, several Members of the House challenged President Clinton’s use of U.S. forces in NATO airstrikes against Yugoslavia in the late 1990s, claiming that the President violated the War Powers Resolution and usurped Congress’s authority under the War Powers Clause. *Id.* at 20. Although Congress voted down a declaration of war and a resolution authorizing the airstrikes, the Members were unsuccessful in legislating an end to U.S. involvement in the Yugoslav conflict and so they filed suit. *Id.* The D.C. Circuit held under *Raines* that the Members lacked standing to pursue their claims, which essentially alleged that the President violated statutory limitations and acted in excess of his authority without a congressional declaration of war. *Id.* at 22. As the Court explained, although *Raines* recognized the narrow *Coleman* exception, it did not hold that “legislators have standing whenever the government does something Congress voted against” or “anytime a President allegedly acts in excess of statutory authority.” *Id.* The Court further noted that, like the plaintiffs in *Raines*, the Members in *Campbell* enjoyed “ample legislative power” to have stopped U.S. participation in the conflict. *Id.* at 23.

3. The House’s Standing Claim Fails Under *Raines* and D.C. Circuit Precedent.

Applying the cases discussed above, the House fails to assert a judicially cognizable injury sufficient to confer Article III standing. The House alleges that the Executive Branch has acted in excess of its authority (here, statutory authority) and as a result has allegedly usurped the House’s constitutionally-prescribed authority to control the federal purse. A “dilution” of legislative authority or “divest[ure]” of a “‘constitutional role’ in the legislative process,” *Chenoweth*, 181 F.3d at 115 (citation omitted), is precisely the type of alleged injury that *Raines* (followed by *Chenoweth* and *Campbell*) held does not confer legislative standing.

Raines’s reasoning applies equally to a case, like this one, that is brought on behalf of a House of Congress as opposed to its individual Members. Such suits have no more support in historical experience. In recounting the long-history of historical practice that “cut against” legislator standing, *Raines* focused on confrontations between the Executive and Congress as a whole, not merely individual Members of either House. *See Raines*, 521 U.S. at 826-28. As *Raines* explained, those “political battles” were waged “between the President and Congress.” *Id.* at 827. Thus, just like a case brought by an individual Member, this suit does not involve a dispute “traditionally thought to be capable of resolution through the judicial process” under Article III. *Id.* at 819.

It is true that *Raines* “attach[ed] some importance to the fact that [the plaintiffs] ha[d] not been authorized to represent their respective Houses of Congress,” but that fact was not dispositive. *Id.* at 829. Nor could it be in this case. Congress has not created any applicable cause of action giving the House a basis to sue, *see infra* at 38-42, and thus it has no greater authority to bring a case on behalf of Article I than the individual legislators in *Raines*. And moreover, as the House concedes, House Mot. at 27, it is suing only for alleged “official capacit[y]” injuries to seats held by its Members as “trustee[s] for their constituents,” rather than “as a prerogative of personal power.” *Raines*, 521 U.S. at 821. That claimed injury is no less “abstract” or “widely dispersed” when alleged by the collective of its Members than when alleged by its individual Members. *Id.* at 829; *see id.* at 832 (holding that the general harm of an “alleged . . . continuing deprivation of federal legislative power” is “shared by all the members of the official class who could suffer that injury, the Members of Congress”).

Nor does the House’s standing claim fall within the “very narrow possible *Coleman* exception to *Raines*.” *Campbell*, 203 F.3d at 23. The House does not challenge—nor has the

Executive taken—any action that has “nullified” the House’s appropriations power. *Id.* at 22. The dispute between the branches is one of statutory interpretation—*i.e.*, the House claims that the Executive Branch’s planned border barrier construction projects go beyond the asserted statutory authority under § 8005 and § 2808. As the D.C. Circuit held in *Campbell*, claims that “the government does something Congress voted against” or “act[ed] in excess of statutory authority” are not “analogous to a *Coleman* nullification.”⁴ *Id.*

Indeed, as in each of the cases discussed above, the challenged Executive actions do not strip the House of any “legislative remedy.” *Id.* at 23; *see id.* at 22 (explaining that the availability of political self-help is “the key to understanding [Raines’s] treatment of *Coleman* and its use of the word nullification.”). The House had and continues to “enjoy ample legislative power” to alleviate its purported harm and is fully capable of defending its interests without resort to the Judiciary. *Id.* The House could, for example, repeal or amend the terms of any statutory authority that it has conferred on the Executive Branch. *See Chenoweth*, 181 F.3d at 116. It could decline to enact legislation or withhold funding for the President’s preferred programs. Or it could use its legislative authority to bring about the result it seeks here by simply withholding appropriations, or by amending the terms of the relevant appropriations statutes to expressly restrict the transfer or expenditure of funds under § 8005 or § 2808 for the purpose of barrier construction along the southern border. *See Raines*, 521 U.S. at 824; *Campbell*, 203 F.3d at 23. Notably, the House recently included such an appropriation restriction on the use of military construction money for border barriers in the pending bill for military construction projects for fiscal year 2020, confirming that it is fully capable of using its constitutional tools to protect its interests. *See Fiscal Year 2020 Military Construction Bill* § 612 (Exhibit 9). In short, the House “possesse[s] political

⁴ Perhaps acknowledging this, the House does not even cite *Coleman* to support its claim.

tools with which to remedy [its] purported injury,” and both Supreme Court and D.C. Circuit precedent require that it “turn to politics instead of the courts.” *See Campbell*, 203 F.3d at 24.

4. The House Relies on Cases That Fail to Support Its Position.

Ignoring the most relevant precedents of the Supreme Court and D.C. Circuit, the House instead relies primarily on a decision from another Judge of this Court in *U.S. House of Representatives v. Burwell*, 130 F. Supp. 3d 53 (D.D.C. 2015) (Collyer, J.). *See* House Mot. at 24-25. In *Burwell*, the House sued the Secretaries of Health and Human Services (HHS) and of the Treasury, alleging that their respective departments were expending unappropriated funds to make certain payments to insurers under a cost-sharing provision of the Patient Protection and Affordable Care Act (ACA). The House alleged that the Executive’s expenditure of funds violated of the Appropriations Clause and thus divested it of “its most defining constitutional function.” *Id.* at 70. The court held that the House had pled a legally cognizable “institutional” injury based on its “Non-Appropriation Theory.” *Id.* That decision was incorrect, as it misapplied and ignored binding precedent.

First, *Burwell* offered no authority for its novel theory of legislative standing. The court recognized that “[i]f the invocation of Article I’s general grant of legislative authority to Congress were enough to turn every instance of the Executive’s statutory non-compliance into a constitutional violation, there would not be decades of precedent for the proposition that Congress lacks standing to affect the implementation of federal law.” *Id.* at 74 (citation omitted). It nevertheless dismissed the Supreme Court’s guidance that our “Constitution does not contemplate an active role for Congress in the supervision of officers charged with the execution of the laws it enacts.” *Id.* (quoting *Bowsher v. Synar*, 478 U.S. 714, 722 (1986)). *Burwell* declared without support that this principle was relevant only to “statutory” and not to “constitutional” claims, like

the House’s “Non-Appropriation Theory.”⁵ *Id.* at 75.

Nor did *Burwell* identify any meaningful difference between the House’s statutory and constitutional claims in that case. The court acknowledged that the merits of the House’s Appropriations Clause claim would “inevitably involve some statutory analysis,” because “the Secretaries’ primary defense [would] be that an appropriation *has* been made, which will require reading the statute.” *Id.* at 74 n.24. The court nonetheless believed that the statutory dispute was inconsequential because “that is an antecedent determination to a constitutional claim.” *Id.* But the statutory issues were not “antecedent” to the constitutional claim in *Burwell*, and they clearly are not “antecedent” to the constitutional claims here; they are the entire basis of the House’s lawsuit. *See infra* at 42-46. There are no Appropriation Clause principles at issue in this case—because the Executive is not claiming that it can spend funds in the absence of congressional authorization—and there is no substantive difference between the House’s constitutional and statutory claims. The only question is whether the border wall funding at issue is authorized by § 8005 and § 2808. That is an issue of statutory interpretation that does not depend on the Constitution.

Nor does *Burwell*’s approach have any limiting principle. *Burwell* would open the door of Article III courts for any dispute in which a House of Congress asserts that the Executive Branch has misunderstood the scope of an appropriations statute such that it is allegedly spending federal monies inconsistent with the views of the House or Senate. Any claim that an Executive Branch

⁵ On this basis, *Burwell* dismissed for lack of standing the House’s claim that the Treasury Secretary disregarded and essentially amended the ACA’s employer mandate provision by taking regulatory actions that delayed its effect and narrowed its scope. *Burwell*, 130 F. Supp. 3d at 75. Although the House framed that claim in constitutional terms as well, the court declared that “the heart of the alleged violation remains statutory, not constitutional: the House alleges not that [the Treasury Secretary] has disobeyed the Constitution, but that he disobeyed the ACA as enacted.” *Id.* at 70.

agency has erroneously interpreted a substantive statute tied to the expenditure of funds could be recast as a violation of the Appropriations Clause, on the theory that the applicable appropriations law did not permit the expenditure of funds for an allegedly unlawful purpose. *See OPM v. Richmond*, 496 U.S. 414, 424 (1990) (holding that “the straightforward and explicit command of the Appropriations Clause” barred payment of a claim for federal benefits not authorized by the relevant substantive statute). Nor is there any principled basis to confine this theory to the Appropriations Clause. Whenever the Executive is asserted to have exceeded its delegated authority—such as by issuing a regulation for which the House believes there is no statutory basis—the House could advance a garden-variety statutory-authority claim in the guise of a constitutional claim alleging that the Executive committed a “bicameralism and presentment” violation by issuing binding decrees without a legislative basis. These sorts of political disputes between the branches over Executive Branch authority are ubiquitous in our history; they are, and have always been, resolved through the political process.⁶

Burwell erroneously held that it would “not consider separation of powers in the standing analysis,” believing that “[t]he doctrine of separation of powers is more properly considered in determining whether the case is ‘justiciable.’” *Burwell*, 130 F. Supp. 3d at 66 (citing *Powell v.*

⁶ For example, when Congress was concerned about unauthorized Executive Branch spending in the aftermath of World War I, it responded not by threatening litigation, but by creating the General Accounting Office (now the Government Accountability Office) to provide independent oversight of the Executive Branch’s use of appropriated funds. *See* Budget and Accounting Act, 1921, Pub. L. No. 67-13, § 312(a), 42 Stat. 20, 25 (creating the GAO); *see also, e.g.*, 67 Cong. Rec. 987 (1921) (statement of Rep. James William Good). Even when the Executive Branch has disregarded an explicit restriction on spending on the ground that it was unconstitutional, *see* Unconstitutional Restrictions on Activities of the Office of Sci. & Tech. Policy in Section 1340(a) of the Dep’t of Def. & Full-Year Continuing Appropriations Act, 2011, 2011 WL 4503236 (O.L.C. Sept. 19, 2011), Congress did not bring suit. Rather, it used its political powers to respond by cutting the Executive’s funding. *See* Jeffrey Mervis, Congress Slashes Budget of White House Science Office, *Science*, Nov. 15, 2011.

McCormack, 395 U.S. 486, 512 (1944)). Prior to the Supreme Court’s decision in *Raines*, the D.C. Circuit had concluded that it should “[k]eep[] distinct [its] analysis of standing and [its] consideration of the separation of powers issues raised when a legislator brings a lawsuit concerning a legislative or executive act.” *Chenoweth*, 181 F.3d at 114. But the D.C. Circuit has since explicitly recognized that this aspect of its prior legislative standing cases is “untenable in the light of *Raines*.” *Id.* at 115. Instead, *Raines* “require[s] [a court] to merge [its] separation of powers and standing analyses.” *Id.* at 116; *Spencer v. Kemna*, 523 U.S. 1, 11–12 (1998) (holding that it is error to treat standing and separation of powers as distinct concerns). As explained below, *see infra* at 32-36, the separation of powers bars the House’s claim of standing.

Burwell failed to give effect to *Raines*, relying instead on the D.C. Circuit’s pre-*Raines* decision in *United States v. AT&T Co.*, 551 F.2d 384 (D.C. Cir. 1976), in which the United States sued AT&T to enjoin the company from complying with a subpoena issued by a House subcommittee. The D.C. Circuit allowed the House to intervene as a defendant, noting that it was “the real defendant in interest since AT&T, while prepared to comply with the subpoena in the absence of a protective court order, has no stake in the controversy beyond knowing whether its legal obligation is to comply with the subpoena or not.” *Id.* at 385. Although the Court held in summary fashion that the “the House as a whole has standing to assert its investigatory power,” it did so without analysis or support in a discussion that amounts to four sentences. *Id.* at 391. The force of the Court’s holding is further undermined by the fact that it pre-dates *Raines*. Moreover, *AT&T*’s unique procedural posture makes it a particularly ill-suited comparator. The separation-of-powers concerns that *Raines* emphasized in the legislative standing analysis are significantly greater in this case than in *AT&T* where the House only intervened in a suit between the Executive and a private party. And in any event, intervention to defend a legislative subpoena provides no

support for the proposition that the House has standing to sue to compel the Executive Branch, in its exercise of statutory authority, to comply with the House’s understanding of a previously enacted statute.

Burwell also failed to discuss the reasoning of *Chenoweth* or *Campbell*, which emphasized that legislators may not short-circuit the legislative process by bringing suit against the Executive Branch. *See Chenoweth*, 181 F.3d at 116-17; *Campbell*, 203 F.3d at 23. Instead, it held incorrectly that Congress lacks legislative recourse when it comes to disputes over Executive Branch spending. *Burwell*, 130 F. Supp. 3d at 73 (holding that the House had standing because eliminating funding for the challenged cost-sharing payments was “*exactly* what the House tried to do”). As the D.C. Circuit emphasized in *Harrington v. Bush*, the Executive Branch’s alleged misuse of funding “does not invade the lawmaking power of Congress;” “all the traditional alternatives related to the ‘power of the purse’ remain intact.” 553 F.2d 190, 213 (D.C. Cir. 1977); *see Campbell*, 203 F.3d at 24 (“‘if at first you don’t succeed, try and try again’—[plaintiffs should] either work for repeal of the Act, or seek to have individual spending bills made exempt” (citation omitted)).

The House’s reliance on *Arizona State Legislature* is equally unavailing. *See* House Mot. at 25-26. In that case, the Supreme Court held that a state legislature had standing to challenge a state initiative that removed congressional redistricting authority from the state legislature. The Court reasoned that the initiative—which amended the state constitution—“would ‘completely nullif[y]’ any vote by the Legislature now or ‘in the future,’ purporting to adopt a redistricting plan.” *Ariz. State Legislature*, 135 S. Ct. at 2665 (quoting *Raines*, 521 U.S. at 823–24). In so holding, the Court emphasized that the case before it “does not touch or concern the question whether Congress has standing to bring a suit against the President” because “[t]here is no federal

analogue to Arizona’s initiative power,” whereas “a suit between Congress and the President would raise separation-of-powers concerns.” *Id.* at 2665 n.12. Here, the Executive’s use of its authority pursuant to § 8005 and potentially § 2808, does not purport to “strip[]” the House of its legislative powers in the appropriations process. *Id.* at 2663. To the contrary, it is acting under express statutory authority granted by Congress. Nor do the Executive’s challenged actions prevent the House from exercising its appropriations authority with respect to these statutory authorities—or the funding of border barrier construction in general—in the future. Indeed, the House has already initiated the legislative process to restrict the Executive’s use of § 2808 in the next fiscal year. *See* Fiscal Year 2020 Military Construction Bill § 612 (Exhibit 9). And, of course, the separation-of-powers concerns that were absent in *Arizona State Legislature* are at their apex here.⁷

The House’s reliance on *INS v. Chadha*, 462 U.S. 919 (1983), for its institutional plaintiff argument fares no better. *See* House Mot. at 24 n.81; *see also* Br. of Former General Counsels of the U.S. House of Representatives as *Amici Curiae* at 8, ECF No. 33-1. The Court’s statement in *Chadha* that “Congress is the proper party to defend the validity of a statute” when the Executive Branch concedes that the statute is unconstitutional was made while discussing “prudential, as opposed to Art[icle] III,” concerns about adverse presentation. *Chadha*, 462 U.S. at 940; *see id.* at 939-40 (recognizing that an Article III case or controversy existed without regard to Congress’s participation). It thus made no difference whether Congress was an amicus or a party in the court

⁷ The House’s status as an “institutional plaintiff” also differs from *Arizona State Legislature*. House Mot. at 26. The Arizona Legislature commenced its suit “after authorizing votes in *both of its chambers*.” *Ariz. State Legislature*, 135 S. Ct. at 2664 (emphasis added). Only the House of Representatives has initiated this action. The legislative authority provided in the Appropriations Clause, however, is vested in both the House and the Senate, not in one or the other working independently.

of appeals. That is why in *Windsor*, the Court relied on *Chadha* to ground its Article III jurisdiction on the Executive Branch’s appeal, *id.* at 761-62, and not to find that the House had Article III standing for its own appeal (as the House had argued), *id.* at 758-59, 761-62; *see id.* at 760 (“[T]he words of *Chadha* make clear its holding that the refusal of the Executive to provide the relief sought suffices to preserve a justiciable dispute as required by Article III.”). Indeed, while the majority in *Windsor* did not directly address the House’s standing claim, a three-Justice dissent rejected the House’s position. *See id.* at 783-85 (Scalia, J., dissenting).

Moreover, *Chadha* involved a statute that gave both the House and the Senate the ability to vote on the propriety of an Executive action and the House was participating in the case solely to preserve that procedural authority. The House was *not* seeking a judicial decree commanding the Executive to do something (or to refrain from doing something). This case, by contrast, does *not* involve any statutory entitlement to take an action internal to Congress (such as take a vote in the House), and is instead an attempt by the House to enlist this Court in its effort to exercise Article II power. Thus even if *Chadha* had found some form of appellate standing for the House—which it did not—that case would nonetheless be limited to highly unique circumstances not present here. *See id.* at 783-85 (Scalia, J., dissenting) (similarly distinguishing *Chadha*).

The scattered cases involving congressional subpoena enforcement are likewise incorrect and inconsistent with the Constitution’s fundamental design, as well as irreconcilable with *Raines*. The few post-*Raines* opinions that the House cites were by other Judges of this Court and, like *Burwell*, erroneously relied on the D.C. Circuit’s pre-*Raines* decision in *AT&T*. *See Comm. on Oversight and Gov’t Reform v. Holder*, 979 F. Supp. 2d 1, 20 (D.D.C. 2013) (Berman Jackson, J.); *Comm. On the Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53, 68 (D.D.C. 2008) (Bates, J.).

But even assuming these cases were somehow correct, they would not apply in this case because the House is not asserting its “investigatory power,” House Mot. at 26 (quoting *AT&T*, 551 F.2d at 391), and there is no Article I power to implement federal law that is analogous to Congress’s investigatory power. Even courts that have (erroneously) recognized Congress’s authority to enforce subpoenas have distinguished attempts to enforce federal law. *See Miers*, 558 F. Supp. 2d at 75 (“[A]lthough Congress does not have the authority to enforce the laws of the nation, it does have the ‘power of inquiry.’”); *see also Walker v. Cheney*, 230 F. Supp. 2d 51, 72 (D.D.C. 2001) (distinguishing claims of congressional standing to compel compliance with subpoena from claims of “alleged injury to legislative power more generally,” which are foreclosed by *Raines*). In this case, the House is attempting nothing less than to “supervis[e] [Executive] officers charged with the execution of the laws it enacts.” *Bowsher*, 478 U.S. at 722. The separation of powers does not permit such overreach.

B. This Suit Epitomizes the Separation-of-Powers Problems Inherent in Suits by the Legislative Branch.

The Constitution carefully defines the separation of Congress’s power to enact the law, the Executive’s power to implement the law, and the Judiciary’s power to interpret the law. “[O]nce Congress makes its choice in enacting legislation, its participation ends. Congress can thereafter control the execution of its enactment only indirectly—by passing new legislation.” *Bowsher*, 478 U.S. at 733-34; *see also Daughtrey v. Carter*, 584 F.2d 1050, 1057 (D.C. Cir. 1978) (“Once a bill becomes law, a Congressman’s interest in its enforcement is shared by, and indistinguishable from, that of any other member of the public.”). As explained above, in our constitutional system, Congress’s belief that the Executive is acting in excess of its statutory authority or violating a statutory restriction, even if that allegedly results in a concomitant constitutional violation, does not give rise to the sort of dispute that is “capable of resolution through the judicial process.”

Raines, 521 U.S. at 819.

More than two centuries of constitutional tradition confirm that understanding. Of the innumerable “confrontations between one or both Houses of Congress and the Executive Branch” in our Nation’s history, none have been resolved through a suit “brought on the basis of claimed injury to official authority or power,” *Raines*, 521 U.S. at 826; *see id.* at 826-28 (describing examples), with the single exception of *Burwell*’s erroneous decision. *See also Ariz. State Legislature*, 135 S. Ct. at 2695 (Scalia, J., dissenting) (“What history and judicial tradition show is that courts do not resolve direct disputes between two political branches of the same government regarding their respective powers.”). “Our regime contemplates a more restricted role for Article III courts,” *Raines*, 521 U.S. at 828-29, that does not extend to the “amorphous general supervision of the operations of government,” *id.* at 828-29. But that is exactly what the House seeks here.

Indeed, this suit is a paradigmatic example of the “separation-of-powers problems inherent in legislative standing.” *Campbell*, 203 F.3d at 21. Accepting the House’s claim of standing would interfere with the proper functioning of all three branches of government.

First, permitting the House to pursue this suit “meddl[es] in the internal affairs of the legislative branch” by allowing one House of Congress to use litigation to circumvent the legislative process. *Id.* (quoting *Chenoweth*, 181 F.3d at 116). Although the House describes this suit as a vindication of its appropriations power, what it really seeks is a departure from the method established by the Constitution for the Legislative Branch to work its will. If the House wanted to bar the Executive from using its authority pursuant to § 8005 or § 2808 to undertake barrier construction at the southern border, it would be necessary for the House to obtain the concurrence of the Senate and present the resulting measure to the President. The expedient of filing a lawsuit—here, by a single House of Congress—frustrates that constitutional design and

undermines legislative accountability. As Justice Scalia aptly put it: “If majorities in both Houses of Congress care enough about the matter, they have available innumerable ways to compel executive action without a lawsuit But the condition is crucial; Congress must care enough to act against the President itself, not merely enough to instruct its lawyers to ask *us* to do so.” *Windsor*, 570 U.S. at 791 (2013) (Scalia, J., dissenting). Thus, “[t]o accomplish what has been attempted by one House of Congress in this case requires action in conformity with the express procedures of the Constitution’s prescription for legislative action: passage by a majority of both Houses and presentment to the President.” *Chadha*, 462 U.S. at 958.⁸

There is no doubt that Congress could expressly restrict or bar the Executive’s use of § 8005 and § 2808 “were a sufficient number in each House so inclined.” *Campbell*, 203 F.3d at 21. Express restrictions on the use of federal funds are a familiar feature of federal legislation. Indeed, Congress imposed express restrictions on the use of the \$1.375 billion it appropriated to DHS in fiscal year 2019 for barrier construction in the Rio Grande Valley Sector. Pub. L. No. 166-6, § 231 (prohibiting construction in certain locations); *id.* § 232 (imposing consultation and public comment requirements for construction in certain locations). Congress did not, however, impose any restrictions on the Executive’s exercise of § 8005 or § 2808, or any other statutory authority for border barrier construction. Indeed, Congress attempted to override the President’s national emergency declaration, but that effort failed to garner enough support to overcome the

⁸ These principles apply with full force to claims implicating Congress’s appropriations power. *Raines* itself involved a dispute over the President’s authority to cancel spending authorized by Congress. See 521 U.S. at 813-15. *Chenoweth* involved a claim that an Executive Branch program was unlawful because, *inter alia*, it “violate[d] the Anti-Deficiency Act, 31 U.S.C. § 1301 *et seq.*” and the “Spending Clause[] of ... the Constitution” by spending federal funds without an appropriation. 181 F.3d at 113. And, in *Harrington*, the D.C. Circuit dismissed for lack of standing a legislator’s Appropriations Clause claim related to the funding and reporting provisions of the CIA Act. 553 F.2d at 213.

President's veto. *See* Summary, H.J. Res. 46, 116th Cong., <https://www.congress.gov/bill/116th-congress/house-joint-resolution/46>. Under D.C. Circuit precedent, the House's inability to avail itself of the constitutionally-prescribed legislative process is dispositive. "Because the parties' dispute is . . . fully susceptible to political resolution," it must be resolved through "political self-help rather than resort to the Article III courts." *Campbell*, 203 F.3d at 21, 24.

Second, the House's claim of standing would allow one chamber of Congress to assume for itself the President's responsibility to execute the law. The Constitution entrusts "to the President, and not to the Congress," "the responsibility to 'take Care that the Laws be faithfully executed.'" *Buckley v. Valeo*, 424 U.S. 1, 138 (1976). The "responsibility for conducting civil litigation in the courts of the United States for vindicating public rights . . . may be discharged only by persons who are 'Officers of the United States'" within the Executive Branch. *Id.* at 140 (quoting U.S. Const., art. II, § 2, cl. 2). That responsibility "cannot possibly be regarded as merely in aid of the legislative function of Congress." *Id.* at 138. *See also Young v. U.S. ex rel Vuitton et Fils S.A.*, 481 U.S. 787, 817 (1987) (Scalia, J., concurring) (Congress's "dependen[ce] on the Executive . . . for enforcement of the laws it enacts" is "a carefully designed and critical element of our system of Government"); *cf. Bowsher*, 478 U.S. at 727 ("The dangers of congressional usurpation of Executive Branch functions have long been recognized."). Indeed, as *Morrison v. Olson* demonstrates, even where Congress has perceived a potential for a conflict-of-interest in the Executive's investigation and prosecution of its own officials, Congress has responded by creating procedures for the appointment of an independent counsel within the Executive Branch, *not* by seeking to enforce the law *itself*. 487 U.S. 654, 659-60 (1988) (reviewing the constitutionality of the Ethics in Government Act's independent counsel provisions).

Third, the House's claim untethers the Judiciary from the traditional understanding of an

Article III case or controversy. Standing doctrine, as an integral feature of the separation of powers, reflects the “overriding and time-honored concern about keeping the Judiciary’s power within its proper constitutional sphere.” *Raines*, 521 U.S. at 820. The Supreme Court has repeatedly admonished against extending the doctrine of standing beyond its traditional bounds—particularly when doing so would thrust the courts into assessing the constitutionality of the other branches’ actions. “Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy,” and the doctrine was developed “to ensure that federal courts do not exceed their authority as it has been traditionally understood.” *Spokeo*, 136 S. Ct. at 1547 (citing *Raines*, 521 U.S. at 820).

Against the long history of non-litigiousness between the political branches, which demonstrates that “[o]ur regime contemplates a more restricted role for Article III courts” *Raines*, 521 U.S. at 828, the House instead urges the Court to “improperly and unnecessarily plunge[]” itself into an open-ended “bitter political battle” between the House and the President, *id.* at 827. The Court should reject this extraordinary invitation.

* * *

For all the reasons discussed above, the House lacks Article III standing. But even if the Court were to conclude that the House can demonstrate standing, it should decline to entertain the House’s claims under the doctrine of equitable discretion. Given the momentous separation-of-powers concerns that this suit presents, the Congress should, at a minimum, be required to enact legislation prohibiting the expenditures it seeks to stop before calling upon the Judiciary to take its side in an inter-branch dispute. In this case, of course, the enactment of such legislation would end the controversy without the need for further judicial involvement. And, indeed, as noted above, there is pending legislation in the House to restrict the use of § 2808. The Court should not

preempt that ongoing legislative process through issuance of a preliminary injunction, which is a remedy guided by equitable principles. *See Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 542-44 (1987) (emphasizing “the fundamental principle that an injunction is an equitable remedy”).

This Circuit’s precedents strongly support refusing judicial review on prudential or equitable grounds. Before *Raines*, the D.C. Circuit applied a broader conception of legislative standing than the one reflected in the Supreme Court’s later decisions. In *Moore v. U.S. House of Representatives*, 733 F.2d 946 (D.C. Cir. 1984), for example, the Court held that “congressmen had standing to object to the purportedly unconstitutional origination of a revenue-raising bill in the Senate.” *Chenoweth*, 181 F.3d at 115 (discussing *Moore*). But despite finding Article III standing, the Court’s pre-*Raines* decisions recognized the serious separation-of-powers concerns presented and dismissed the suits in the exercise of equitable discretion because the congressional plaintiffs had not exhausted their legislative remedies. Thus, in *Moore*, the Court held that “the district court properly dismissed [the plaintiffs’] complaint [under circuit precedent] because their ‘rights [could] be vindicated by congressional repeal of the [offending] statute.’” *Id.* (quoting *Moore*, 733 F.2d at 956). The Court’s “conclusion that the plaintiffs had standing to sue, in other words, got them into court just long enough to have their case dismissed because of the separation of powers problems it created.” *Chenoweth*, 181 F.3d at 115

Raines has since made clear that suits like *Moore* do not satisfy Article III, and the same is true here. But the D.C. Circuit’s pre-*Raines* decisions also show that even if a case brought by a congressional plaintiff could satisfy Article III, it nonetheless should be dismissed where legislative remedies are available but have gone unused. Here, as in those cases, the House’s rights could “be vindicated by congressional” action. *Id.* at 115. And the House’s suit presents

separation-of-powers problems of the highest order. Accordingly, declining to review the House's claims would be the proper course of judicial restraint.

II. The House Lacks a Cause of Action.

Even if the House had standing to pursue its claims, it lacks a cause of action under which it could bring them in this Court. Congress is well aware of how to create an express cause of action for itself or for individual legislators. *See* 2 U.S.C. § 692(a)(1) (cause of action for individual legislators to challenge Line Item Veto Act); 28 U.S.C. § 365 (cause of action for the Senate to seek civil enforcement of a subpoena against the Executive Branch in specified circumstances); Depts' of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119, § 209(b), (d)(2)-(3), 111 Stat. 2440, 2482 (1997) (cause of action for the House, Senate, or individual legislators to challenge Census methodology). The House lacks such a cause of action here, and there is no indication Congress has taken the extraordinary step of allowing one of its chambers to sue the Executive Branch. As the Supreme Court explained in *Raines*, an express cause of action such as the one provided by the Line Item Veto Act “significantly lessens the risk of unwanted conflict with the Legislative Branch,” 521 U.S. at 820 n.3, that occurs when one House of Congress seeks unilaterally to affect conduct outside the Legislative Branch.

In the absence of express authority to bring this suit, the House's complaint suggests two general sources for a potential cause of action: the Appropriations Clause and the APA. But this is not “a proper case” for the “judge-made remedy” of an implied cause of action to enjoin alleged violations of the Appropriations Clause by agency officials. *Armstrong*, 135 S. Ct. at 1384; *cf. Ziglar v. Abbasi*, 137 S. Ct. 1843, 1857 (2017). Likewise, recognizing a cause of action for Congress under the APA would run counter to longstanding doctrines that prevent chambers of

Congress from bringing suit under statutes of general applicability that confer a cause of action on private parties to challenge agency action. Because the House has no authority to bring these claims, it cannot succeed on the merits.

A. The House Has No Cause of Action Under the Appropriations Clause.

The Supreme Court has recognized that “[t]he ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity,” and as such is available only in “some circumstances” that present “a proper case.” *Armstrong*, 135 S. Ct. at 1384. Although equity is “flexible,” the Court has cautioned the judiciary to avoid creating remedies that were “historically unavailable from a court of equity” because “Congress is in a much better position” to perceive “new conditions that might call for a wrenching departure from past practice.” *Grupo Mexicano*, 527 U.S. at 322, 333. More recently, the Court has emphasized that inferring a cause of action is a “significant step under separation-of-powers principles” because in doing so, courts intrude on the prerogatives of the entire “Congress, [which] . . . has a substantial responsibility to determine” whether suit should lie against individual officers and employees. *Abbasi*, 137 S. Ct. at 1856. Although *Abbasi* recognized the existence of “traditional equitable powers,” *id.*, Congress’s grant of equitable authority to the courts is confined to the “boundaries of traditional equitable relief,” which is “the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution,” *Grupo Mexicano*, 527 U.S. at 318, 322.

These concerns are mitigated in the “classical[]” type of implied equitable suit, which “permit[s] potential defendants in legal actions to raise in equity a defense available at law,” because these suits merely shift the timing and posture of litigating a legal question that Congress already authorized to be adjudicated in federal court. *Michigan Corrections Org. v. Michigan Dep’t of Corrections*, 774 F.3d 895, 906 (6th Cir. 2014); *see, e.g., Free Enter. Fund v. Public Co.*

Accounting Oversight Bd., 561 U.S. 477, 491 n.2 (2010). But in this case, the House is arguing for an equitable cause of action to enforce its powers under the Appropriations Clause even though it is “not subject to or threatened with any enforcement proceeding,” and thus the parties’ dispute otherwise would not be in federal court *at all* but for the House’s actions. *See Douglas v. Indep. Living Ctr. of S. Cal., Inc.*, 565 U.S. 606, 620 (2012) (Roberts, C.J., dissenting). Without the mitigating factors typically surrounding implied causes of action, the House’s attempt to wield the Constitution “as a cause-of-action-creating sword” poses serious separation-of-powers concerns. *See Michigan Corrections Org.*, 774 F.3d at 906. For instance, in *Grupo Mexicano*, the Court reversed a preliminary injunction prohibiting the defendant from transferring funds because, even though the district court’s order was analogous to an equitable action called a “creditor’s bill,” such actions were historically only available to judgment creditors. *Grupo Mexicano*, 527 U.S. at 319–20. Likewise, the fact that *private parties* have historically been able to obtain injunctive relief against federal executive officials does not suggest that *federal legislators* can obtain such relief.

Although *Burwell* recognized “an implied cause of action under the Constitution itself,” its reasoning is unpersuasive. 130 F. Supp. 3d at 78. Since *Burwell*, the Supreme Court has strongly cautioned lower courts against creating implied remedies. *See Abbasi*, 137 S. Ct. at 1856-57. *Burwell* distinguished *Armstrong* on the basis that the House and Senate were the “only two possible plaintiffs” who could enforce the rights protected by the Appropriations Clause. 130 F. Supp. 3d at 79. Of course, “[t]he assumption that, if respondents have no standing to sue, no one would have standing is not a reason to find standing.” *Schlesinger*, 418 U.S. at 227. But Congress is not the only entity that has alleged harm at the hands of the decisions challenged here. Indeed, the House is actually participating as an amicus in actions brought by other entities to enjoin

construction along the southern border, and presumably agrees that the plaintiffs in those cases have standing. *See State of California et al. v. Trump et al.*, Case No. 4:19-cv-00872-HSG (N.D. Cal.). Finally, the concerns in *Armstrong* are, if anything, heightened when a House of Congress is the party seeking the implied cause of action because it can fill that gap through an Act of Congress. Even if congressional suits to enforce the Appropriations Clause are “desirable . . . as a policy matter,” the House cannot use implied cause-of-action doctrine to achieve what it has been denied through the political process. *Alexander v. Sandoval*, 532 U.S. 275, 287 (2001).

Burwell, citing *Arizona State Legislature*, also erred in holding that the House did not need an express cause of action because it is not a private party. 130 F. Supp. 3d at 78. The respondents in *Arizona State Legislature* limited their threshold challenges to standing, and did not contest whether the Arizona legislature had a cause of action under the Elections Clause. And even though the Supreme Court entertained a federal constitutional claim brought by a *state* legislative body, the Court recognized that “a suit between Congress and the President would raise separation-of-powers concerns absent here.” *Arizona State Legislature*, 35 S. Ct. at 2665 n.12. Those concerns weigh heavily against recognizing an implied cause of action under the Appropriations Clause in this case.

B. The House Has No Cause of Action Under the APA.

The APA creates a cause of action for a “person” who is “aggrieved by” or suffers “legal wrong because of” federal agency actions. 5 U.S.C. § 702. It thus incorporates “the universal assumption” that laws authorizing suits by “‘person[s] adversely affected or aggrieved’ leave[] private interests (even those favored by public policy) to be litigated by *private* parties.” *Director, Office of Workers’ Compensation Programs v. Newport News Shipbuilding*, 514 U.S. 122, 132 (1995) (emphasis added) (citations omitted); *cf. Franklin v. Massachusetts*, 505 U.S. 788, 800-01 (1992) (requiring an “express statement by Congress” before subjecting President to APA review

in light of separation-of-powers concerns). The House has, in the past, disclaimed that it has power to bring “suit under the myriad of general laws authorizing aggrieved persons to challenge agency action,” dismissing as “speculative” the possibility that it would attempt “to afford itself broad standing to challenge the lawfulness of Executive conduct.” Brief for U.S. House of Representatives at 17, 22 & n.25, *U.S. Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 316 (1999), 1998 WL 767637 (citing *Newport News Shipbuilding*, 514 U.S. at 128). This case presents no occasion for departing from that longstanding rule.

In *Burwell*, the court held that *Newport News* was not controlling because it addressed “agencies acting in [their] governmental capacity,” not the legislature, 130 F. Supp. 3d at 78, but the underlying interpretive assumption that “private interests (even those favored by public policy) [are] to be litigated by private parties,” continues to apply. *Newport News*, 514 U.S. at 139. And despite *Burwell*’s assertion that “there is precedent for the House filing suit to vindicate its rights in other contexts,” none of the cases it cited (which are also cited in footnote 81 of the House’s motion) involved the APA. *Burwell*, 130 F. Supp. 3d at 78. APA actions are a far cry from precedents relied upon by the House where a chamber of Congress sued to assert investigatory and oversight authority, *see generally AT&T Co.*, 551 F.2d at 390–91, or where Congress created a specific cause of action to proceed in Court. Nothing in the APA’s text or context suggests it was intended to authorize unprecedented suits between the Legislative and Executive Branches, and the near-total absence of such suits in the seventy years since the APA was enacted confirms as much.

III. The House Is Unlikely To Succeed On The Merits Of Its Constitutional Claims.

Even assuming the House had standing to bring this lawsuit and a cause of action, its purported constitutional claims under the Appropriations Clause are unlikely to succeed on the merits. The House’s constitutional claims do nothing more than allege statutory violations of

§ 8005 and § 2808. The Supreme Court has made clear that “claims simply alleging that the President has exceeded his statutory authority are not ‘constitutional’ claims.” *Dalton*, 511 U.S. at 473. Defendants are not relying on independent Article II authority to undertake border construction. Further, Defendants are not claiming that they can spend funds in the absence of congressional authorization. This case thus raises no issue of constitutional dimension, and the Appropriation Clause claims amount to nothing more than statutory claims in disguise. The outcome of this case (to the extent it presents a justiciable controversy at all) turns on the meaning of the disputed statutes—a purely statutory dispute that has no constitutional basis.

The Supreme Court’s decision in *Dalton* makes this clear. The issue in *Dalton* was whether a presidential order closing a military base was subject to review under the APA. *Id.* at 464-66. The Court of Appeals for the Third Circuit held that the order was unconstitutional because the President lacked statutory authority. *Id.* at 471. The Supreme Court unanimously rejected the proposition that “whenever the President acts in excess of his statutory authority, he also violates the constitutional separation-of-powers doctrine.” *Id.* at 471. Citing a long line of cases, the Court instead recognized that the “distinction between claims that an official exceeded his statutory authority, on the one hand, and claims that he acted in violation of the Constitution, on the other, is too well established to permit this sort of evisceration.” *Id.* at 474.

By asserting that actions in excess of statutory authority are constitutional violations, the House is doing precisely what the Court rejected in *Dalton*. The House asserts no constitutional violation separate from the alleged statutory violations. The House also does not allege that Defendants’ compliance with any of the statutes would be unconstitutional. Instead, the House’s argument focuses entirely on “whether defendants’ proposed expenditures comply with Congress’s specific statutory limitations[.]” House Mot. at 29. Indeed, the House’s merits

argument on its Appropriations Clause claim is devoted entirely to parsing the meaning and interpretation of the statutory elements of § 8005 and § 2808. *See id.* at 29-40. But these allegations of ultra vires statutory actions do not state independent constitutional claims. *See Dalton*, 511 U.S. at 473-74. Moreover, because Defendants concede that the only source of their authority is statutory, “no constitutional issue whatever is raised.” *Id.* at 474 n.6.

The House relies significantly on the decision in *Burwell* to support its position that there is an Appropriations Clause violation here, but that decision did not address *Dalton* and, as explained above, its rationale would transform countless statutory disputes into “constitutional” cases. “[I]f every claim alleging that the President exceeded his statutory authority were considered a constitutional claim,” then constitutional challenges would be “broadened beyond recognition.” *Id.* at 474. It would require little creativity for a legislative plaintiff to recast a claim that an agency has erroneously interpreted a statute tied to the appropriations of funds into an asserted violation of the Appropriations Clause. The Framers rejected such a “system in which Congress can hale the Executive before the courts ... to correct a perceived inadequacy in the execution of its laws.” *Windsor*, 570 U.S. at 788-89 (2013) (Scalia, J., dissenting).

Even accepting the framework of *Burwell*, this case is distinguishable. In *Burwell* the Court held that the House had standing to pursue its allegation that the Executive had drawn “funds from the Treasury without a valid appropriation.” 130 F. Supp. 3d at 74. In so ruling, the Court distinguished between disputes about “the implementation, interpretation, or execution of federal statutory law,” which the Court stated that the House would not have standing to bring, and a claim that “the appropriations process is itself circumvented,” which the Court held that the House would have standing to bring, *id.* at 74-75.

Defendants have not circumvented the appropriations process or contravened the will of Congress by funding border barrier construction using permanent statutory authorities that Congress has provided to DoD. Congress did not address in its appropriations to DHS in the CAA whether the Executive Branch could utilize *other* statutory authorities that Congress provided to *other* agencies for border barrier construction. The appropriations to DHS simply appropriated funds for border barrier construction in certain locations. *See* Pub. L. 116-6, div. A, §§ 230-32. Congress's specific appropriation to DHS does not prohibit the Acting Secretary of Defense from utilizing statutory authorities available to DoD. This case is therefore distinguishable from *Burwell*, which involved a dispute over whether HHS could utilize a permanent appropriation to the agency to fund payments in the absence of a specific appropriation to that same agency for such payments.

Had Congress wished to restrict all other border barrier construction—including construction where other statutory authorities authorized funding—it could have done so by imposing appropriations riders, as it has done in the past, including elsewhere in the very same appropriations act. *See, e.g., id.* § 219 (“None of the funds made available to the United States Secret Service by this Act or by previous appropriations Acts may be made available for the protection of the head of a Federal agency other than the Secretary of Homeland Security”). Indeed, the House's recent bill to restrict the use of military construction money for border barriers illustrates that the House knows how to limit the use of funds through legislation when it wants to do so. *See* Fiscal Year 2020 Military Construction Bill § 612 (Exhibit 9). Moreover, the President had already made clear prior to the CAA's passage his intention to use alternative statutory sources to fund border barrier construction, *see* House Mot. at 8-10, but Congress nonetheless did not include any rider forbidding it. The absence of such provisions precludes any inference that

Congress intended to, or actually did, foreclose the use of other available authorities. *See Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 190 (1978) (the “doctrine disfavoring repeals by implication applies with full vigor when the subsequent legislation is an appropriations measure”).

“An agency’s discretion to spend appropriated funds is cabined only by the text of the appropriation, not by Congress[’s] expectations of how the funds will be spent, as might be reflected by legislative history.” *Salazar v. Ramah Navajo Chapter*, 567 U.S. 182, 200 (2012); *see Int’l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Donovan*, 746 F.2d 855, 860 (D.C. Cir. 1984) (Scalia, J.) (“The issue here is not how Congress expected or intended the Secretary to behave, but how it required him to behave, through the only means by which it can (as far as the courts are concerned, at least) require anything – the enactment of legislation. Our focus, in other words, must be upon the text of the appropriation.”). Because nothing in the text of the appropriations to DHS in the CAA restrict the use of other statutory authorities for border barriers, the history of negotiations between the President and Congress regarding fiscal year 2019 appropriations for border barrier construction is irrelevant to the purported constitutional issues in this case.

For these reasons, the House has not established a likelihood of success on the merits of its Appropriation Clause claims.

IV. The House Is Unlikely To Succeed On The Merits Of Its Statutory Claims.

A. DoD’s Transfer Of Funds Pursuant To § 8005 Is Lawful.

The House also cannot establish a likelihood of success on the merits of its claim that DoD violated the requirements of § 8005 by transferring funds between DoD accounts in order to supplement funding available for border wall construction under § 284. As with any statute, the Court must start with the plain meaning of the text, looking to the “language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *United*

States v. Barnes, 295 F.3d 1354, 1359 (D.C. Cir. 2002) (citation omitted). The House’s arguments fail both on the language of the statute itself and its broader context.

First, the House argues that DoD’s transfer violates § 8005’s requirement that transfers be for “higher priority items, based on unforeseen military requirements,” because the “supposed need to transfer money does not arise from unforeseen circumstances.” House Mot. at 31-32. But § 8005 uses the term “unforeseen” in the specific context of the budgeting process—not whether a particular development was predictable. Congress does not appropriate funds to DoD on a “line item basis,” and § 8005 is a grant of authority to DoD to make “changes in the application of financial resources from the purposes originally contemplated and budgeted for, testified to, and described in the justifications submitted to congressional committees in support of budget requests.” H. Rep. No. 93-662, at 15–16. The need for DoD to exercise its § 284(b)(7) authority to provide support for counter-drug activities did not arise until February 2019, when DHS requested support from DoD to construct fencing in drug trafficking corridors. *See* 10 U.S.C. § 284(a)(1) (authorizing DoD to support counter-drug activities only once “such support is requested”). Accordingly, the need to provide support for these projects was an unforeseen military requirement at the time of the President’s fiscal year 2019 budget request. *See* Rapuano Decl., Ex. C, at 1-2. And it remained an unforeseen military requirement through Congress’s passage of DoD’s fiscal year 2019 budget in September 2018, which was five months *before* DHS’s request. *See* Pub. L. No. 115-245, 132 Stat. 2981. DoD’s need to provide counter-drug assistance under § 284 in response to DHS’s request was thus not accounted for in DoD’s fiscal year 2019 budget and is accordingly “based on unforeseen military requirements” for purposes of § 8005.

Second, the House asserts that DoD violated § 8005 because Congress denied “the Administration’s repeated demands for border wall funding.” House Mot. at 32. Again, this takes the statutory language out of its relevant context. Congress has not “denied” any request by DoD to fund “the item” referenced in the transfer—namely counter-drug activities funding, including fence construction, under § 284. The House assumes that § 8005 should be read to refer to a legislative judgment concerning the appropriation of funds for a different agency under different statutory authorities. But Congress’s affirmative appropriation of \$1.375 billion to CBP for the construction of “primary pedestrian fencing” in the Rio Grande Valley Sector in furtherance of CBP’s mission under IIRIRA, Pub. L. 116-6, div. A, § 230, does not constitute a “denial” of appropriations to DoD for its counter-drug activities in furtherance of DoD’s mission under § 284. The statutory language of § 8005 is located in, and directed to, DoD’s appropriations, and nothing in the DHS appropriations statute indicates that Congress “denied” a request to fund DoD’s statutorily authorized counter-drug activities, which expressly include fence construction 10 U.S.C. § 284(b)(7). Nor did Congress otherwise restrict the use of available appropriations for that purpose. *See* Pub. L. No. 116-6. And because Congress never denied DoD funds to undertake the § 284 projects at issue, the House’s claim fails.

Third, the House argues that border fencing cannot be built using funds transferred pursuant to § 8005 because the statute “does not authorize transferring funds for ‘military construction.’” House Mot. at 33. The House, however, overstates the scope and application of the “military construction” exception in § 8005. Section 8005 provides, in relevant part, that the Secretary of Defense may “transfer not to exceed \$4,000,000,000 of working capital funds of the Department of Defense or funds made available in this Act to the Department of Defense for military functions (except military construction) between such appropriations or funds or any

subdivision thereof[.]” The text thus lists the two types of “funds” and “appropriations” that may be transferred under § 8005: 1) “working capital funds” or 2) “funds made available in this Act” (*i.e.*, the DoD FY19 Appropriations Act) “for military functions (except military construction).” There is no violation of this restriction in this case because DoD has not transferred military construction funds or appropriations. Neither the surplus Army personnel funds from which the original \$1 billion was transferred, nor the counter-narcotics support line of the Drug Interdiction and Counter-Drug Activities, Defense, to which the funds were transferred, constitute military construction funds or appropriations. *See* Pub. L. 115-245, title I (military personnel appropriation); title VI (Drug Interdiction and counter-drug activities appropriation); *see also* Rapuano Decl. ¶ 5, Ex. D (explaining transfer of appropriations).

As the House well knows, in the appropriations context, “military construction” is a term of art that generally refers to the Military Construction and Veterans Affairs budget (also known as the MILCON budget). The MILCON budget is overseen by different congressional committees and is separate from the annual DoD appropriations act. *See* Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019, Pub. L. No. 115-244, 132 Stat. 2897. When the “military construction” limitation in the precursors to § 8005 first appeared in the 1970s, the DoD appropriations act sometimes included both general appropriations to DoD and specific appropriations for military construction. *See* DoD Appropriations Act, 1972, § 736 (Dec. 18, 1971). The language was further modified in DoD’s 1979 appropriations act to “appropriations or funds made available in this Act to the Department of Defense for military functions (except military construction).” DoD Appropriations Act, 1979, § 834 (Oct. 13, 1978). But even in this statute, Congress had appropriated funds for “ammunition facilities authorized in military construction authorization Acts.” *Id.* tit. IV (“Procurement of

Ammunition, Army”). And from time to time, Congress has included supplemental MILCON funding in a DoD appropriations act.⁹ In these situations, the “except military construction” parenthetical precludes DoD from including these MILCON funds in a transfer action under section 8005.

The history of this provision demonstrates that the “military construction” limitation was understood by Congress to refer to specifically designated military construction appropriations or funds added to the DoD appropriations bill, not to general activities within the DoD appropriations bill that merely involve some element of construction. This distinction has been long understood by both DoD and Congress, even if supplemental MILCON funds are not always included in DoD’s appropriations bill. For example, in 2007, Congress approved a proposed transfer of funds under § 8005 from the “military personnel, army” account into the “drug interdiction and counter-drug” account for the purpose of “construction of an infrastructure project” in Nicaragua. *See* Reprogramming Application & Congressional Approvals, Sept. 2007 (Exhibit 10). Had Congress not intended § 8005 to be used in this manner for the purpose of construction projects, it could have indicated its disagreement. Instead, all of the pertinent Congressional committees, including the House and Senate, stated they had no objection to the transfer. *See id.* Further, Congress has permitted the transfer of funds under § 8005 to support DoD’s involvement in CBP’s border security mission, which included using the National Guard to construct border barriers. *See* Reprogramming Application & Congressional Approvals, Sept. 2006 (transferring funds to

⁹ *See, e.g.*, Department of Defense & Emergency Supplemental Appropriations for Recover from & Response to Terrorist Attacks on the United States Act, 2002, Pub. L. No. 107-117, § 8005 (transfer authority), ch. 10 (military construction appropriations); Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, Pub. L. No. 109-148, § 8005 (transfer authority), ch. 7 (military construction appropriations),

support the National Guard's involvement in Operation Jump Start, the DoD mission in 2006-08 to support CBP's border security efforts, which included construction efforts by the National Guard) (Exhibit 11); *see also* Joint Statement of Rood and Gilday (describing Operation Jump Start and National Guard's role in "building more than 38 miles of fence") (Exhibit 3). Congress's failure to object to the use of § 8005 for construction projects undermines the House's argument, and provides no sound basis to enjoin Defendants' transfer of funds here.

B. The House Cannot Establish Article III Standing to Challenge Future Border Barrier Construction Under § 2808.

The House is also unlikely to succeed on its claim that DoD violated § 2808. In addition to the Article III standing issues described above, the House's assertion of Article III standing with respect to this claim suffers from the additional flaw that the Acting Secretary of Defense has not yet decided to undertake or authorize any barrier construction projects under § 2808. *See Elec. Privacy Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity*, 878 F.3d 371, 375 n.2 (D.C. Cir. 2017) ("A plaintiff unlikely to have standing is *ipso facto* unlikely to succeed").

Article III requires that cases be decided in the concrete context of an actual case or controversy, not in the abstract. U.S. Const. art. III, § 2, cl. 1. As relevant here, [a]n allegation of future injury may suffice [for standing] if the threatened injury is 'certainly impending,' or there is a 'substantial risk' that the harm will occur." *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014) (quoting *Clapper*, 568 U.S. at 414 n.5). "[A]llegations of *possible* future injury are not sufficient." *Clapper*, 568 U.S. at 409 (citation omitted). By limiting the judicial power to instances in which specific individuals have suffered concrete injuries, standing requirements "serve[] to prevent the judicial process from being used to usurp the powers of the political branches." *Id.* at 408.

The House lacks standing because the Acting Secretary of Defense has not yet decided to

undertake or to authorize any barrier construction projects under § 2808. *See* Rapuano Decl. ¶¶ 13-15. DoD is currently undertaking an internal review process to inform any decision by the Acting Secretary of Defense regarding the use of § 2808, including assessments by the Chairman of the Joint Chiefs of Staff and the DoD Comptroller that are due to the Acting Secretary by May 10, 2019. *See id.* ¶¶ 14-15. “When a decision is made to undertake military construction projects authorized by” § 2808, the statute requires that DoD notify Congress of its decision and provide information about the costs of the approved projects. 10 U.S.C. § 2808(b). Accordingly, Congress will be notified after any decision is made to utilize § 2808 for border barrier construction.

The fact that the President invoked § 2808 in the national emergency declaration is not sufficient to establish standing where the decision to undertake or authorize barrier construction projects under § 2808 lies with the Acting Secretary of Defense. Article III jurisdiction cannot rest on speculation by the House that DoD may use § 2808 to construct yet-to-be-identified border barriers. This type of contingent “possible future injury” is not sufficient to establish Article III jurisdiction. *See Clapper*, 568 U.S. at 409. In the same vein, without a decision by the Acting Secretary to undertake or authorize barrier construction projects pursuant to § 2808, there has been no violation of § 2808 whatsoever.

The nature of DoD’s decisionmaking regarding any future use of § 2808 further illustrates why the House lacks standing to bring this claim. Before authorizing § 2808 construction, the Acting Secretary of Defense will determine that the project is “necessary to support such use of the armed forces.” 10 U.S.C. § 2808(a). That determination can be considered only within the context of the Acting Secretary of Defense authorizing specific military construction projects presented to him for approval. Moreover, in order to fund any projects under § 2808, DoD will need to defer construction of an equal amount of appropriated, but unobligated, military

construction projects. The Court should not decide the House's § 2808 claim until specific decisions about its use have been made, let alone before they have been made in a manner that would injure the House. *See, e.g., OXY USA Inc. v. FERC*, 1999 WL 506736, at *1 (D.C. Cir. June 9, 1999) (per curiam) (holding that "petitioner has failed to demonstrate that it has suffered an injury-in-fact" because the agency has made "no determination" as to the contested issue); *Ctr. For Sci. In Pub. Interest v. FDA*, 2004 WL 2011467, at *5 (D.D.C. Aug. 6, 2004) (same).

V. The House Has Not Established That an Irreparable Injury is Likely in the Absence of an Injunction.

The Court of Appeals has established "a high standard for irreparable injury." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). To satisfy this standard, "the injury must be beyond remediation." *Id.* "Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation weighs heavily against a claim of irreparable harm." *Id.* at 297. In addition, "the injury must be both certain and great; it must be actual and not theoretical." *Id.* The movant "must show the injury complained of is of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm." *Id.* (internal quotations omitted).

The House cannot satisfy this demanding standard for the same reasons it lacks standing. *See supra* at 16-38. The House does not allege any tangible or concrete harm stemming from border barrier construction, such as an injury to property or the environment. Instead, the House asserts a far more abstract claim that it will suffer an "institutional injury" absent an injunction. House Mot. at 40. But this claimed violation concerning the structural relationship between the Executive Branch and the House is insufficient to establish irreparable injury. "[W]hile a violation of constitutional rights can constitute *per se* irreparable harm, . . . *per se* irreparable harm is caused

only by violations of ‘personal’ constitutional rights . . . to be distinguished from provisions of the Constitution that serve ‘structural’ purposes, like the Supremacy Clause.” *N.Y. State Rest. Ass’n v. N.Y. City Bd. of Health*, 545 F. Supp. 2d 363, 367 (S.D.N.Y. 2008), *rev’d on other grounds*, 556 F.3d 114 (2d Cir. 2009); *see Pub. Serv. Co. of New Hampshire v. Town of W. Newbury*, 835 F.2d 380, 382 (1st Cir. 1987) (cases holding that a constitutional deprivation amounts to irreparable harm “are almost entirely restricted to cases involving alleged infringements of free speech, association, privacy[,] or other rights as to which temporary deprivation is viewed of such qualitative importance as to be irremediable by any subsequent relief”); *American Petroleum Inst. v. Jorling*, 710 F. Supp. 421, 431 (N.D.N.Y. 1989) (differentiating for purposes of irreparable injury “personal constitutional rights” and “provisions of the Constitution that serve structural purposes”). Indeed, the cases the House cites to support its position involve individual rights cases that are well far afield from this case. *See* House Mot. at 41; *Archdiocese of Washington v. Washington Metro. Area Transit Auth.*, 897 F.3d 314, 334 (D.C. Cir. 2018) (religious organization’s deprivation of free speech rights); *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) (the requirement that an individual pay allegedly unconstitutional taxes or risk criminal penalties); *England*, 454 F.3d at 302-04 (Establishment Clause violations). These cases do not support the House’s position that a legislative plaintiff suffers an irreparable institutional injury based on the Executive Branch’s actions undertaken pursuant to disputed statutory authority.

In any event, the House’s alleged institutional injury is not “irreparable” under the law of this Circuit. As explained above, the House’s constitutional claims are nothing more than allegations of statutory violations and it has not suffered, nor will it suffer, constitutional injury. The House will also have the opportunity to pursue and vindicate its institutional interests in the full course of this litigation. “[I]t is the resolution of the case on the merits, not whether the

injunction is [granted], that will affect [separation of powers and federalism] principles.” *Texas v. United States*, 787 F.3d 733, 767-68 (5th Cir. 2015). Moreover, the alleged institutional injury is not beyond remediation because the House “has a broad range of legislative authority it can use” to bring about the result it seeks in this lawsuit. *Campbell*, 203 F.3d at 23; *see supra* at 24-25. Most obviously, the House can change or restrict § 2808 and § 8005 through the legislative process. The House’s alleged injury is thus not irreparable.

VI. The Balance of Equities and Public Interest Weigh Against Injunctive Relief.

The final two preliminary injunction factors, the public interest and the balance of the equities, also weigh against granting the House’s motion. These factors merge when the Executive is a party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The House has not established that its alleged harm would outweigh the public interest. As explained above, the House cannot establish an Article III injury sufficient to confer standing and its abstract claim of “institutional injury” is not irreparable. In contrast, preventing the construction of border barriers would harm the Executive’s “weighty” interest in border security and enforcement of immigration laws. *See Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Here, the President has declared a national emergency along the southern border and the situation there is continuing to worsen due to the increasing numbers of migrants that are overwhelming DHS’s resources, thereby constraining the resources available for drug interdiction and law enforcement priorities at the border. *See* Proclamation; Veto Message; Nielsen Letter. Border walls have proven to be extremely effective at stopping drugs and migrants from unlawfully crossing the southern border. *See* Martin Decl. (Exhibit 2). In these circumstances, a preliminary injunction prohibiting the construction of additional barriers would harm the public’s interest in border security and public safety.

CONCLUSION

For the reasons explained above, the motion for preliminary injunction should be denied.

DATE: May 8, 2019

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EXHIBIT 1

Secretary

U.S. Department of Homeland Security
Washington, DC 20528



Homeland
Security

March 28, 2019

United States Senate
Washington, DC 20510

U.S. House of Representatives
Washington, DC 20515

Dear Members of Congress:

I am writing to you with an urgent request. For many months now, the Department of Homeland Security (DHS) has been tracking a surge in migrant arrivals at the U.S. southern border. It is the responsibility of DHS to secure our borders, enforce our immigration laws, and provide appropriate humanitarian protections to those who need it. Indeed, Congress has explicitly directed DHS to take operational control of the southern border. But today I report to you that we are increasingly unable to uphold that responsibility given the emergency situation. We are grappling with a humanitarian and security catastrophe that is worsening by the day, and the Department has run out of capacity, despite extraordinary intra-Departmental and interagency efforts. I am especially concerned about the level of families and unaccompanied children arriving at our borders and in federal custody. Accordingly, DHS requests immediate Congressional assistance to stabilize the situation.

The border numbers paint a picture of a dire situation. Late last year, DHS was apprehending 50,000 – 60,000 migrants a month. Last month, we apprehended or encountered more than 75,000, the highest in over a decade. And this month, we are on track to interdict nearly 100,000 migrants. What we are seeing is nearly unprecedented in the modern era. Unlike previous flows, these migrants are not arriving in high numbers, one-at-a-time. They are arriving in large groups. In a normal year, DHS would encounter one or two groups of over 100 migrants. Already in this fiscal year, we have encountered nearly 100 large groups comprised of 100+ migrants, nearly half of which have arrived in remote locations. Our men and women on the frontlines are simply not resourced to handle these levels, and I report to you today that we are struggling to transport and process—let alone adequately care for—this many individuals coming into our custody, especially those in hard-to-reach areas.

The volume of “vulnerable populations” is unsustainable. Our system has been able to cope with high numbers in the past, but the composition of today’s flows makes them virtually unmanageable. Historically, the vast majority of aliens we encountered were single-adult males from Mexico who could be quickly removed after a short period of detention if they had no legal right to stay. Today, the majority are families and unaccompanied children, who pose a unique

challenge to the system because most cannot be easily cared for, efficiently processed, or expeditiously removed, due to resource constraints and outdated laws. The result is a dangerous and growing backlog of individuals in custody that has forced us to begin releasing large numbers of aliens, most of whom will never appear for their immigration court hearings, further exacerbating “pull” factors into the United States. Unfortunately, Alternatives to Detention, such as ankle-bracelet monitoring, have proven expensive in the long run and ineffective at ensuring removals ordered by an immigration judge.

Now we face a system-wide meltdown. DHS facilities are overflowing, agents and officers are stretched too thin, and the magnitude of arriving and detained aliens has increased the risk of life-threatening incidents. At the present time, Customs and Border Protection (CBP) has more than 1,200 unaccompanied alien children (UACs) in custody, hundreds of which have been with CBP for days, an unacceptable length of stay in facilities not designed to hold children for extended periods. By law, most of these children must be transferred to the Department of Health and Human Services (HHS) for care in residential shelters. While HHS is taking steps to rapidly add thousands of shelter beds, the system is hitting peak capacity. In addition to UACs, CBP has at least 6,600 families in custody, bringing the total number of children sitting in CBP facilities to approximately 4,700. We are doing everything possible to address these numbers and reduce backlogs, but they are a symptom of a broken system.

My greatest concern is for the children, who are put at high risk by this emergency and who are arriving sicker than ever before after traveling on the treacherous trek. Our agents and officers are performing more than 60 hospital visits a day—many to ensure young people get immediate treatment—and we now are regularly seeing individuals arrive with life-threatening conditions. Moreover, as agents get pulled off the line to escort migrants to receive medical assistance, we are left with even less capacity to handle new arrivals. The humanitarian situation cannot be ignored. Reports of violence and sexual assault along the route are now pervasive, meaning that many arriving migrants require especially focused care. In some cases, girls as young as 10 years old in DHS custody require pregnancy tests so we can be sure they get essential medical support. And with increased flows, smugglers and traffickers are forcing more people into inhumane conditions along the journey and putting lives in danger. They are preying on innocent people for profit and exploiting this crisis to line their pockets by breaking our laws.

Our most urgent need is to increase throughput to avoid threats to life and property. At present, DHS border and immigration facilities are at (or over) capacity with serious over-crowding. We need additional temporary facilities as soon as possible in order to process arriving aliens, especially those entering illegally between ports of entry. Immigration and Customs Enforcement (ICE) has been urgently working to acquire additional bed space and to speed up transfers of individuals into their custody, but DHS has nonetheless been forced to temporarily release adults and families directly from Border Patrol custody. This prevents us from detaining them to ensure that they are afforded the most expeditious process under immigration law and, where appropriate, removed. Without additional assistance, we will be forced to increase the releases of the single-adult population from ICE—the only population for which we can currently effectively enforce U.S. immigration laws. As such, we are witnessing the real-time dissolution of the immigration system.

Moreover, HHS will likely need many more beds as the influx of children grows. In HHS custody, children receive accommodations appropriate for young people while they await placement with adult sponsors in the United States. However, because of the surge in arrivals, CBP has high numbers of children that have not been transferred. As noted earlier, HHS is taking steps to rapidly add thousands of shelter beds. But in the short term, HHS is still approaching its maximum capacity and will very likely require thousands of additional beds in the coming weeks and months. I must emphasize how important it is to quickly transfer children out of border locations, which are not designed for long-term stay and are especially inadequate for the care of young people. A potential overflow of children in DHS custody represents our most acute humanitarian risk.

But bed space is not the only issue. To cope with the overall volume of arriving migrants, a resource surge is needed throughout the system to ensure efficient throughput and proper care. This includes medical teams, vehicles and transportation workers, legal services, and more. We need temporary processing facilities with full humanitarian and staffing support. And we now project that we will need at least hundreds of additional personnel to support CBP and ICE in providing humanitarian and operational assistance, including conducting welfare checks, preparing meals, and accounting for personal property.

In light of the above, DHS requests immediate assistance from Congress, including emergency resources and specific authorities to cope with the escalating situation.

At this time, DHS is assessing the resources needed to make up for shortfalls and sustain critical operations. While recent appropriations provided DHS with additional humanitarian and operational funds, the Department is projecting we will exceed these resources and be unable to uphold basic mission requirements because of the severity of the flow. I will be working with the Office of Management and Budget to provide you additional details in the near future, but the situation is so dire we want to make notification to you now that we will require additional resources to reduce system backlogs to ensure immediate safety and care of individuals in our custody.

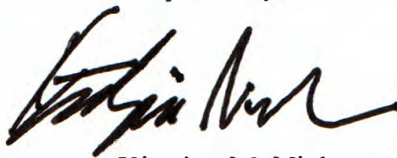
DHS also seeks authorities to address the underlying causes of this emergency and to restore order, while ensuring we can provide humanitarian assistance to those who need it. Most immediately, we need the authority to treat all arriving migrant children equally. Currently, we can reunite many unaccompanied children from Mexico with their families and return them home, when appropriate, but we are legally unable to do so for children from non-contiguous countries. The result is that hundreds of Central American children come into our custody each day, await transfer to HHS care, and, ultimately, are placed with a sponsor in the United States. This serves as another dangerous “pull” factor. DHS seeks authority to return UACs to their families and home countries in a safe and orderly manner if they have no legal right to stay. In the coming days, I will transmit proposed legislative language to Congress to fix this, along with measures to allow DHS to keep alien families in custody *together* through the immigration process and to allow asylum-seekers to apply for U.S. protection from within Central America, rather than take the dangerous journey north. These legislative solutions will help address the root causes of the emergency.

In the meantime, I am doing everything within my authority to prevent the situation from getting worse. This week I met with senior Mexican officials to discuss what can be done on their side of the border to help stem the historic flows. I also signed a first-ever regional compact with the countries of the Northern Triangle—El Salvador, Guatemala, and Honduras—to address irregular migration, counter human smuggling and trafficking, and crack down on transnational criminal organizations that are also fueling the crisis. Operationally, we are redirecting resources and personnel from across the Department toward border security and migration management, we are putting out a call for volunteers from non-border missions, and we continue to receive support from interagency partners. We also plan to redirect field office personnel staffing ports of entry to help address the humanitarian situation. But once again, this will not be enough.

We need Congress to act immediately to address the growing emergency. Let me be clear: the journey of any migrant—especially at the hands of a smuggler or trafficker—is not a safe one. And the migrant surge has made matters worse, not only for U.S. border security but for the safety of migrants themselves. We must be able to come together on a bipartisan basis to take action. We have common cause. We all want to enforce the laws of the United States, ensure a safe and orderly migrant flow, protect our communities, reduce the flow of drugs, facilitate legal trade and travel, secure our borders, and support vulnerable populations. This is one of the most serious crises the Department of Homeland Security has ever faced, and we need your help.

Copies of this letter have been sent to the Speaker of the House; the Majority and Minority Leaders in the Senate and House; and the Chairmen and Ranking Members of the Senate Appropriations Committee, Senate Judiciary Committee, Senate Homeland Security and Governmental Affairs Committee, House Appropriations Committee, House Judiciary Committee, and House Homeland Security Committee.

Respectfully,

A handwritten signature in black ink, appearing to read 'Kirstjen Nielsen', written in a cursive style.

Kirstjen M. Nielsen
Secretary

EXHIBIT 2

DECLARATION OF JERRY B. MARTIN

I, Jerry B. Martin, declare as follows:

1. I am the Chief, U.S. Border Patrol Strategic Planning and Analysis Directorate (SPAD), U.S. Customs and Border Protection (CBP), an agency of the Department of Homeland Security (DHS). I have held this position since March 2019. Over the course of my career I have served in multiple roles directly relating to border barrier projects; including being the principal liaison for Border Patrol in the current wall planning effort, Pedestrian Fence 225 (PF225), and Vehicle Fence 300, (VF300), project implementation (2007-2010), and the Border Infrastructure System Project (2003-2007). SPAD identifies and develops the requirements which lead to the acquisition of border infrastructure such as barriers. I entered on duty with the U.S. Border Patrol (USBP) in 1992 and worked throughout various field leadership roles until ultimately becoming the Chief Patrol Agent of the Blaine Border Patrol Sector.
2. In my current position I am personally aware of CBP activities in support of ongoing and planned barrier projects.
3. The statements in this declaration are based on my personal knowledge and information that I have received in my official capacity.

Why Barriers Work

4. CBP is a U.S. Government Agency responsible for securing the Nation's borders. CBP's mission is to prevent terrorists and terrorist weapons from entering the United States, and to detect, interdict, and apprehend those who attempt to enter illegally or smuggle any person or contraband across the Nation's borders. CBP is specifically responsible for patrolling nearly 6,000 miles of Mexican and Canadian international land

borders and over 2,000 miles of coastal waters surrounding the Florida Peninsula and the island of Puerto Rico.

5. CBP divides its enforcement zones along the southern border with Mexico into nine Sectors. From west to east, the sectors are: San Diego, El Centro, Yuma, Tucson, El Paso, Big Bend, Del Rio, Laredo, and Rio Grande Valley (RGV).
6. Since the USBP began constructing border barriers nearly 30 years ago, these barriers have proved to be a critical component in gaining operational control of the border. Illegal drug and human smuggling activity have decreased in those areas where barriers are deployed.
7. Physical barriers are an essential component to the USBP's layered border security approach and provide numerous benefits including: (1) barriers protect USBP agents, (2) barriers assist USBP in gaining and maintaining operational control of the border, and (3) barriers support a safe and secure border community.
8. Border barriers allow USBP agents to gain more control and situational awareness in the area near the U.S.-Mexico border. Barriers deter and impede smugglers and aliens from entering the U.S. illegally and increase the effectiveness of USBP. For example, apprehensions in El Centro Sector were over 61,000 in 2006, just before border infrastructure was deployed. By 2007, after infrastructure was deployed, apprehension had dipped to just over 55,000. This downward trend continued through 2017, when El Centro sector had just over 18,000 apprehensions of illegal entrants. Following the construction of barriers in San Diego in 2007, apprehensions in San Diego decreased by 95-percent. The Tucson Sector, by contrast, did not receive a barrier and saw a significant increase in apprehensions. In 1992, Tucson Sector apprehended

approximately 71,000 individuals. By 2000, apprehensions in Tucson Sector had increased by 768-percent to over 616,000. Additionally, the McAllen Border Patrol Station Area of Responsibility in the Rio Grande Valley Sector does not have a barrier and USBP has seen a 197 percent increase in apprehensions for Fiscal Year 2019 to date over Fiscal Year 2018. Such dramatic shifts in apprehensions shows the impact barriers have on the flows of illegal crossings.

9. In areas with inadequate barriers, CBP is experiencing large numbers of individuals and narcotics beings smuggled into the country illegally, often by Mexican Cartels who use the areas as drug smuggling corridors. These areas have been included in DHS' February 25, 2019 Request for Assistance Pursuant to 10 U.S.C. §284 to Department of Defense (DoD).
10. In Yuma Sector, for fiscal year 2018, there were over 26,000 apprehensions of illegal entrants attempting to enter the United States between border crossings. Also during fiscal year 2018, Border Patrol had over 1,400 separate drug-related events between border crossings in the Yuma Sector, through which it seized over 8,000 pounds of marijuana, over 78 pounds of cocaine, over 102poundsof heroin, over 1,700pounds of methamphetamine, and over 6 pounds of fentanyl.
11. In fiscal year 2018, there were over 31,000 apprehensions of illegal entrants attempting to enter the United States between border crossings in the El Paso Sector. Also in fiscal year 2018, Border Patrol had over 700 separate drug-related events between border crossings in the El Paso Sector, through which it seized over 15,000 pounds of marijuana, over 342 pounds of cocaine, over 40 pounds of heroin, and over 200 pounds of methamphetamine.

12. The number of apprehensions and drug seizures in the Yuma and El Paso Sectors improved following the initial installation of barriers, but the barriers are less effective now and need to be improved. Cartels and smugglers have changed their tactics and thus vehicle fencing is no longer effective and steel mesh barriers can be easily breached.
13. Given the high entry of people and drugs, the Secretary of DHS has determined that El Paso Sector and Yuma Sector are areas of high illegal entry where DHS is required under Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (“IIRIRA”), to construct physical barriers and roads to deter and prevent illegal entry of people and drugs.
14. To support DHS’s action under Section 102 of IIRIRA, the Secretary of DHS requested that the Secretary of Defense, pursuant to 10 U.S.C. § 284(b)(7), assist by constructing fences, roads, and lighting within the El Paso and Yuma Sectors. The Acting Secretary of Defense has concluded that the support requested satisfies the statutory requirements of 10 U.S.C. § 284(b)(7) and that DoD will provide such support for Yuma and El Paso Projects.
15. If barrier projects are stopped, CBP will be unable to respond as effectively to the threats along the U.S.-Mexico border, and the country will continue to see high levels of illegal entry of both people and drugs.

This declaration is made pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct to the best of my current knowledge.

Executed on this 24 day of April, 2019.



Chief Jerry B. Martin
U.S. Border Patrol Strategic Planning and Analysis Directorate
U.S. Customs and Border Protection

EXHIBIT 3

Joint Statement by
The Honorable John Rood
Under Secretary of Defense for Policy
Office of the Secretary of Defense
And
Vice Admiral Michael Gilday, USN
Director of Operations
The Joint Staff

Before the 116th Congress
Committee on Armed Services
U.S. House of Representatives
January 29, 2019

Introduction

Chairman Smith, Ranking Member Thornberry, distinguished Members of the Committee: Thank you for the opportunity to testify before you today on Department of Defense (DoD) support to the Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) mission to secure the southern border of the United States.

The Department of Defense Has a Long History of Supporting Border Security

DoD has a long history of supporting efforts to secure U.S. borders. Since the early 1990s, DoD has supported civilian law enforcement agency border security activities, counterdrug activities, and activities to counter transnational organized crime and other transnational threats. Active, Reserve, and National Guard personnel have provided operational military support, such as aerial reconnaissance, ground surveillance, search and rescue support, and medical support. DoD has loaned facilities and special equipment, such as aerostats, ground surveillance radars, and ground sensors to CBP. DoD has also provided temporary housing support to the Department of Health and Human Services (HHS) as part of the national response to the surge of unaccompanied alien children (UAC) at the U.S. southern border. From 2012 to 2017, DoD provided shelter for nearly 16,000 UAC, who received care, security, transportation, and medical services from HHS. Consistent with section 2815 of the National Defense Authorization Act for FY 2017 (Public Law 114-328), the Secretary of Defense certified that providing this sheltering support to HHS would not negatively affect military training, operations, readiness, or other military requirements, including National Guard and Reserve readiness.

At the direction of President Bush, in support of CBP's Operation Jump Start, DoD provided National Guard personnel (6,000 from June 2006 - July 2007; 3,000 from July 2007 - July 2008) to augment and enhance CBP's ability to execute its border security mission. National Guard personnel provided aviation, engineering, medical, entry identification, communications, vehicle maintenance, administrative, and other non-law enforcement support. In addition, the National Guard improved the southern border security infrastructure by building more than 38 miles of fence, 96 miles of vehicle barrier, more than 19 miles of new all-weather road, and road repairs exceeding 700 miles. At the direction of President Obama, DoD provided

up to 1,200 National Guard personnel annually from 2010 to 2016 in support of CBP's Operation Phalanx. National Guard personnel provided aerial reconnaissance, analytical support, and support to counterdrug enforcement activities that enabled CBP to recruit and train additional officers and agents to serve on the border.

DoD Works Closely with the Department of Homeland Security on Requests for Assistance

Across the full-range of support that DoD has provided DHS – border security support, disaster support, special event security support, and support for protection of the President – DoD has worked closely with DHS, as DHS develops its requests for DoD assistance as deliberately, expeditiously, and effectively as possible to meet mission needs.

DoD carefully considers all requests for assistance, including in order to determine whether DoD has the requested capabilities and resources and whether providing the requested assistance is consistent with the law. When a request is approved, DoD works with the requester to select the right forces and resources to meet the requester's mission needs, and to avoid or mitigate the potential impacts on military readiness. DoD has used the same process for every DHS request for assistance related to DHS's border security mission.

Current Department of Defense Border Security Support

In his April 4, 2018, memorandum, "Securing the Southern Border of the United States," the President directed the Secretary of Defense to support DHS in "securing the southern border and taking other necessary actions to stop the flow of deadly drugs and other contraband, gang members and other criminals, and illegal aliens into this country." The President also directed the Secretary of Defense to request the use of National Guard personnel to assist in fulfilling this mission, pursuant to section 502 of title 32, U.S. Code, and to use such other authorities as appropriate and consistent with applicable law. The President also directed the Secretary of Defense and the Secretary of Homeland Security, in coordination with the Attorney General, to determine what other resources and actions are necessary to protect our southern border, including Federal law enforcement and U.S. military resources.

From April 2018 to the present, National Guard personnel have supported CBP Operation Guardian Support, augmenting CBP efforts to secure the southern border. National Guard personnel have performed a range of administrative, logistical, and operational support tasks, freeing U.S. Border Patrol agents from these duties and enabling more U.S. Border Patrol agents to patrol the border. National Guard support to CBP Operation Guardian Support is scheduled to continue through September 30, 2019.

From October 2018 to the present, active-duty military personnel have supported CBP Operation Secure Line by providing: aviation support (e.g. transporting CBP quick reaction forces); engineering support (e.g., hardening U.S. ports of entry (POEs), providing temporary barriers, and emplacing concertina wire); planning support; last line of outward defense protection for CBP personnel performing their Federal functions at POEs; and loaned personnel protective equipment (e.g., helmets with face shields, hand-held shields, and shin guards). Active-duty military personnel were selected because the Secretary of Defense determined them to be the best-suited and most readily available forces from the Total Force to provide the assistance requested by the DHS. Then, as now, the Department continually assesses the necessary force composition and layout. We adjust as necessary to meet mission requirements, while minimizing impacts on readiness, as well as consider future and global response military operational requirements. For example, the protection of CBP personnel performing their Federal functions at POEs will shift to a contingency basis (i.e., available when needed), starting February 1, 2019. Likewise, with each approved request, we ensure that the assigned military forces are trained and prepared to execute the mission in support of CBP.

On January 11, 2019, the Acting Secretary of Defense approved a DHS request for additional active-duty military support of CBP Operation Secure Line. These military personnel will operate mobile surveillance cameras in Arizona, California, New Mexico, and Texas in all nine Border Patrol Sectors, and emplace concertina wire on existing barriers at areas designated by CBP along the southern border between POEs in Arizona and California. The mobile surveillance camera support is currently scheduled to continue through September 30, 2019. CBP has requested that an additional 150 miles of concertina wire be emplaced no later than March 31, 2019.

All of this military support has been – and will continue to be – provided consistent with the law, including the Posse Comitatus Act, section 1385 of Title 18, U.S. Code. Military personnel have supported civilian law enforcement efforts, but do not participate directly in law enforcement activities, such as search, seizure, and arrest. Military personnel protecting CBP personnel performing their Federal functions at POEs are, consistent with the April 1971 opinion of the Department of Justice Office of Legal Counsel, also complying with the Posse Comitatus Act.

Conclusion

The military's presence and support increase the effectiveness of CBP's border security operations, free U.S. Border Patrol agents to conduct law enforcement duties at the southern border, and enhance situational awareness to stem the tide of illegal immigration, human smuggling, and drug trafficking along the southern border. The ongoing temporary DoD support is a continuation of DoD's long history of supporting DHS and CBP in their mission to secure the U.S. border. These decisions are far from static, as we continue to work with the Services, the National Guard Bureau, and U.S. Northern Command to evaluate mission requirements and associated risks.

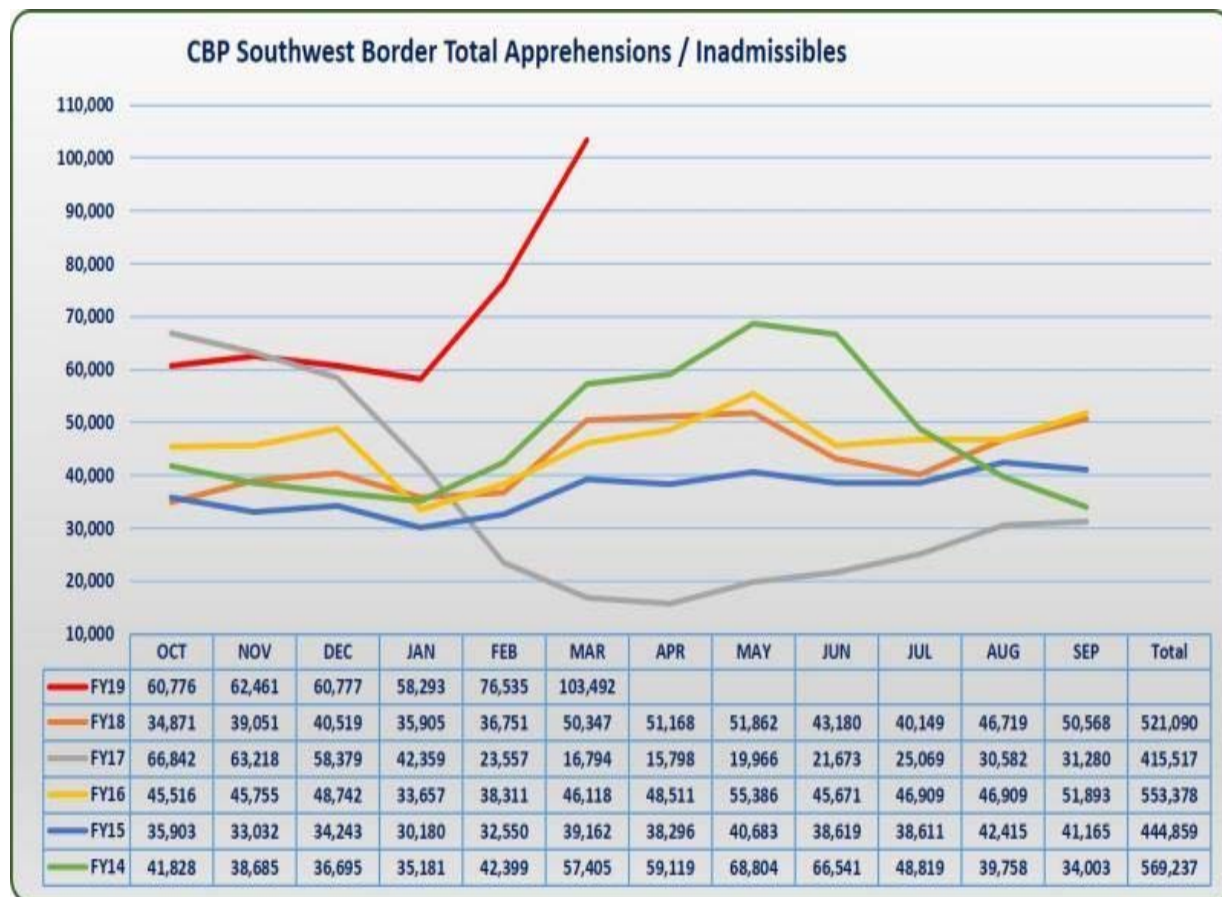
Chairman Smith, Ranking Member Thornberry, distinguished members of the Committee, thank you for the opportunity to testify before the committee.

EXHIBIT 4



U.S. Customs and
Border Protection
(/)

Southwest Border Migration FY 2019



U.S. Border Patrol Southwest Border Apprehensions FY 2019

USBP	Demographic	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY
Southwest Border	Unaccompanied Alien Child	4,968	5,259	4,755	5,113	6,828	8,975		
	Family Units*	23,116	25,164	27,507	24,189	36,531	53,077		

USBP	Demographic	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY
	Single Adult	22,922	21,432	18,489	18,682	23,525	30,555		
	Southwest Border Total Apprehensions	51,006	51,855	50,751	47,984	66,884	92,607		

***Note:** Family Unit represents the number of individuals (either a child under 18 years old, parent or legal guardian) apprehended with a family member by the U.S. Border Patrol.

In March, 92,607 people were apprehended between ports of entry on the Southwest Border, compared with 66,884 in the month of February and 47,984 in January. In FY18, a total of 396,579 individuals were apprehended between ports of entry on our Southwest Border.

For breakdown by Sector, visit **USBP Southwest Border Apprehensions by Sector** (</newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions>)

Office of Field Operations Southwest Border Inadmissibles FY 2019

Field Operations	Demographic	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
	Unaccompanied Alien Child	453	404	350	408	426	423			
Southwest Border	Family Units*	4,178	4,986	4,382	4,211	4,210	4,194			
	Single Adults	5,053	5,146	5,213	5,619	4,939	6,168			
	Accompanied Minor Child*	86	70	81	71	76	100			
	Southwest Border Total Inadmissibles	9,770	10,606	10,026	10,309	9,651	10,885			

***Note:** Family Unit represents the number of individuals (either a child under 18 years old, parent or legal guardian) deemed inadmissible with a family member by the Office of Field Operations.

*Accompanied Minor Child represents a child accompanied by a parent or legal guardian and the parent or legal guardian is either a U.S. Citizen, Lawful Permanent Resident or admissible alien, and the child is determined to be inadmissible.

In March, 10,885 people presenting themselves at ports of entry on the Southwest Border were deemed inadmissible, compared with 9,651 in the month of February and 10,309 in January. In FY18, 124,511 people presenting themselves at ports of entry on the Southwest Border were deemed inadmissible.

OFO inadmissibility metrics include: individuals encountered at ports of entry who are seeking lawful admission into the United States but are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws, and individuals who withdraw an application for admission and return to their countries of origin within a short timeframe.

For breakdown by Field Office, visit **Southwest Border Inadmissibles by Field Office** (</newsroom/stats/sw-border-migration/ofo-sw-border-inadmissibles>).

Last modified: April 24, 2019



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EXHIBIT 5



United States Border Patrol

Total Illegal Alien Apprehensions By Month - FY 2000

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore	716	523	514	527	525	588	496	529	449	395	517	426	6,205
Miami	401	342	493	375	562	614	461	613	483	639	543	711	6,237
New Orleans	559	626	333	596	684	1,000	581	507	375	262	392	563	6,478
Ramey	221	102	115	142	28	71	63	202	124	99	284	280	1,731
Blaine	246	184	177	228	204	226	200	311	229	196	197	183	2,581
Buffalo	168	106	61	80	65	117	117	110	109	185	219	233	1,570
Detroit	213	145	191	190	183	227	169	146	138	165	130	160	2,057
Grand Forks	68	30	20	33	33	71	44	57	57	36	48	65	562
Havre	73	82	80	122	78	100	190	246	129	120	178	170	1,568
Houlton	51	37	32	25	42	25	30	30	25	45	105	42	489
Spokane	112	103	65	92	100	95	80	102	118	156	154	147	1,324
Swanton	153	111	125	97	87	108	132	118	140	370	374	142	1,957
Big Bend (formerly Marfa)	891	1,111	1,192	1,093	1,675	1,597	1,272	1,154	885	921	998	900	13,689
Del Rio	8,161	6,812	5,118	20,354	24,706	24,416	18,145	13,443	7,820	9,373	10,132	8,698	157,178
El Centro	13,761	11,035	8,882	21,924	31,072	33,301	26,534	27,460	20,071	15,820	15,018	13,248	238,126
El Paso	6,386	5,203	4,651	14,914	15,049	16,018	12,883	10,645	7,637	7,533	8,106	6,671	115,696
Laredo	6,962	6,058	4,477	13,794	14,745	15,549	11,174	9,707	6,436	6,760	6,971	6,340	108,973
Rio Grande Valley (formerly McAllen)	8,416	7,371	5,808	15,443	16,814	17,995	15,005	12,390	7,764	9,842	9,073	7,322	133,243
San Diego	9,046	7,620	5,978	15,363	20,204	18,279	16,751	16,615	13,186	10,630	9,356	8,653	151,681
Tucson	32,384	25,767	30,182	70,632	73,506	76,245	65,213	62,555	44,341	46,849	47,905	40,767	616,346
Yuma	5,403	5,219	4,964	12,462	13,557	16,663	13,073	12,327	6,953	6,228	6,753	5,145	108,747
Coastal Border	1,897	1,593	1,455	1,640	1,799	2,273	1,601	1,851	1,431	1,395	1,736	1,980	20,651
Northern Border	1,084	798	751	867	792	969	962	1,120	945	1,273	1,405	1,142	12,108
Southwest Border	91,410	76,196	71,252	185,979	211,328	220,063	180,050	166,296	115,093	113,956	114,312	97,744	1,643,679
Monthly Total	94,391	78,587	73,458	188,486	213,919	223,305	182,613	169,267	117,469	116,624	117,453	100,866	1,676,438



United States Border Patrol

Total Illegal Alien Apprehensions By Month - FY 2001

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore	532	449	360	403	407	463	443	482	463	436	406	367	5,211
Miami	338	590	481	483	452	392	399	503	607	735	532	450	5,962
New Orleans	315	306	396	358	634	446	740	377	346	402	354	359	5,033
Ramey	399	285	187	418	79	73	19	117	94	107	101	73	1,952
Blaine	179	168	151	141	159	175	145	194	231	192	186	168	2,089
Buffalo	203	85	74	87	81	116	89	137	134	165	156	107	1,434
Detroit	132	139	107	195	182	167	157	156	177	195	349	150	2,106
Grand Forks	48	23	45	44	66	73	96	85	112	100	144	85	921
Havre	108	67	58	77	136	108	104	97	93	169	175	113	1,305
Houlton	40	37	30	54	27	30	24	31	33	153	182	44	685
Spokane	158	114	126	99	100	131	87	95	117	132	109	67	1,335
Swanton	126	120	75	101	73	95	109	139	168	543	715	199	2,463
Big Bend (formerly Marfa)	844	874	776	846	1,046	1,427	1,249	1,123	1,058	1,107	906	831	12,087
Del Rio	7,648	5,344	3,756	11,218	16,447	16,833	11,444	9,005	7,048	6,069	6,038	4,025	104,875
El Centro	13,712	9,979	8,299	18,672	21,412	21,815	20,699	17,203	11,385	11,175	10,965	7,536	172,852
El Paso	6,095	5,401	4,683	10,862	12,369	15,311	12,738	11,343	8,035	8,607	9,945	7,468	112,857
Laredo	5,154	3,652	2,762	8,228	10,656	12,604	9,928	9,216	6,586	6,475	7,338	4,469	87,068
Rio Grande Valley (formerly McAllen)	6,634	5,975	4,280	10,102	12,298	12,890	11,366	11,204	8,152	9,191	9,426	6,326	107,844
San Diego	8,002	5,556	5,270	11,558	12,085	13,510	12,597	11,270	8,467	7,580	8,297	5,883	110,075
Tucson	30,009	25,889	20,907	43,972	54,913	64,779	52,949	44,573	33,602	29,550	28,028	20,504	449,675
Yuma	4,534	5,039	4,348	9,632	11,003	11,411	9,843	7,990	4,798	3,848	3,705	2,234	78,385
Coastal Border	1,584	1,630	1,424	1,662	1,572	1,374	1,601	1,479	1,510	1,680	1,393	1,249	18,158
Northern Border	994	753	666	798	824	895	811	934	1,065	1,649	2,016	933	12,338
Southwest Border	82,632	67,709	55,081	125,090	152,229	170,580	142,813	122,927	89,131	83,602	84,648	59,276	1,235,718
Monthly Total	85,210	70,092	57,171	127,550	154,625	172,849	145,225	125,340	91,706	86,931	88,057	61,458	1,266,214



United States Border Patrol

Total Illegal Alien Apprehensions By Month - FY 2002

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore	437	439	373	362	247	314	359	340	360	358	457	325	4,371
Miami	391	352	251	445	415	494	422	475	440	532	564	362	5,143
New Orleans	352	220	299	357	373	459	492	307	460	427	424	495	4,665
Ramey	3	47	11	37	36	98	32	94	29	90	222	136	835
Blaine	127	152	172	106	147	132	156	175	124	148	157	136	1,732
Buffalo	50	73	36	74	101	112	155	121	85	64	142	89	1,102
Detroit	135	106	98	99	135	107	137	132	106	173	133	150	1,511
Grand Forks	85	80	87	93	87	113	131	159	153	138	108	135	1,369
Havre	114	119	92	89	107	144	123	138	113	139	163	122	1,463
Houlton	27	31	24	43	40	35	31	36	28	42	59	36	432
Spokane	62	53	60	98	91	100	90	104	99	135	121	129	1,142
Swanton	82	73	76	71	58	104	100	125	210	293	387	157	1,736
Big Bend (formerly Marfa)	913	810	876	826	1,040	1,184	1,312	1,163	702	748	940	878	11,392
Del Rio	2,938	2,367	2,104	8,384	10,087	12,068	8,540	5,404	3,787	3,301	4,297	3,708	66,985
El Centro	4,069	3,318	3,720	9,670	11,118	15,673	14,274	11,415	8,870	7,897	9,557	8,692	108,273
El Paso	4,441	3,483	3,784	8,185	9,393	11,309	11,783	9,972	6,931	8,044	9,018	7,811	94,154
Laredo	3,431	2,949	2,608	7,711	10,628	12,270	10,709	7,861	6,545	5,830	6,376	5,177	82,095
Rio Grande Valley (formerly McAllen)	4,784	3,744	3,843	8,035	8,438	10,153	10,310	9,473	8,109	7,523	8,762	6,753	89,927
San Diego	4,530	3,178	3,183	7,716	9,172	12,832	11,712	11,222	9,251	9,340	10,115	8,430	100,681
Tucson	11,124	10,523	9,208	25,182	32,264	46,094	47,712	36,333	30,898	30,212	30,078	24,020	333,648
Yuma	1,582	2,134	2,175	4,084	3,584	5,409	5,569	4,581	3,562	3,766	3,414	2,794	42,654
Coastal Border	1,183	1,058	934	1,201	1,071	1,365	1,305	1,216	1,289	1,407	1,667	1,318	15,014
Northern Border	682	687	645	673	766	847	923	990	918	1,132	1,270	954	10,487
Southwest Border	37,812	32,506	31,501	79,793	95,724	126,992	121,921	97,424	78,655	76,661	82,557	68,263	929,809
Monthly Total	39,677	34,251	33,080	81,667	97,561	129,204	124,149	99,630	80,862	79,200	85,494	70,535	955,310



United States Border Patrol

Total Illegal Alien Apprehensions By Month - FY 2003

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore	371	292	288	309	253	315	336	330	267	247	211	346	3,565
Miami	686	398	287	493	542	461	623	434	408	491	481	627	5,931
New Orleans	462	430	349	535	506	504	576	516	399	378	252	244	5,151
Ramey	198	316	121	201	32	36	46	231	81	21	172	233	1,688
Blaine	107	107	89	92	116	125	93	121	69	152	140	169	1,380
Buffalo	112	79	55	35	30	34	26	22	33	28	30	80	564
Detroit	151	195	153	178	188	170	220	195	196	235	232	232	2,345
Grand Forks	102	81	88	78	110	119	113	90	99	123	131	89	1,223
Havre	151	105	86	92	98	97	156	135	132	128	110	116	1,406
Houlton	53	22	12	19	17	16	19	30	21	38	29	16	292
Spokane	126	88	72	79	69	54	42	60	68	137	87	110	992
Swanton	107	80	80	101	113	121	101	156	337	352	235	172	1,955
Big Bend (formerly Marfa)	754	722	872	862	974	1,097	860	1,099	678	773	867	761	10,319
Del Rio	3,037	1,942	2,083	6,546	7,127	6,579	5,020	4,973	2,857	2,993	3,700	3,288	50,145
El Centro	8,399	6,107	4,572	12,369	13,293	11,632	6,116	6,528	5,791	6,128	6,076	5,088	92,099
El Paso	6,545	5,303	4,008	9,255	10,000	8,883	7,359	8,120	6,998	7,618	7,538	7,189	88,816
Laredo	4,644	4,157	3,991	7,444	7,603	7,803	5,990	6,683	5,165	5,570	6,371	5,100	70,521
Rio Grande Valley (formerly McAllen)	6,024	4,218	3,814	7,630	7,905	7,498	6,560	7,095	6,153	7,042	7,737	6,073	77,749
San Diego	7,339	5,379	4,280	10,177	10,958	11,158	9,082	10,680	9,271	10,207	11,217	11,767	111,515
Tucson	21,352	17,206	11,481	26,826	33,854	37,055	29,099	37,847	32,532	34,201	36,639	29,171	347,263
Yuma	3,698	2,697	2,723	5,816	5,155	6,694	5,273	5,665	6,085	4,752	4,341	3,739	56,638
Coastal Border	1,717	1,436	1,045	1,538	1,333	1,316	1,581	1,511	1,155	1,137	1,116	1,450	16,335
Northern Border	909	757	635	674	741	736	770	809	955	1,193	994	984	10,157
Southwest Border	61,792	47,731	37,824	86,925	96,869	98,399	75,359	88,690	75,530	79,284	84,486	72,176	905,065
Monthly Total	64,418	49,924	39,504	89,137	98,943	100,451	77,710	91,010	77,640	81,614	86,596	74,610	931,557



United States Border Patrol

Total Illegal Alien Apprehensions By Month - FY 2004

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore	296	225	220	172	184	183	185	214	171	0	0	0	1,850
Miami	437	321	367	522	418	346	371	252	415	344	494	315	4,602
New Orleans	284	244	184	293	226	376	282	286	296	98	158	162	2,889
Ramey	213	247	332	166	188	31	178	87	99	74	165	33	1,813
Blaine	135	100	101	76	118	145	132	136	106	85	117	103	1,354
Buffalo	25	17	30	28	28	84	60	84	85	86	95	49	671
Detroit	154	157	111	114	108	202	149	173	148	184	212	200	1,912
Grand Forks	92	89	85	105	70	106	84	134	136	122	105	97	1,225
Havre	81	48	90	84	62	84	69	92	83	108	106	79	986
Houlton	27	19	17	38	17	15	17	22	17	32	24	18	263
Spokane	83	79	51	69	103	101	52	58	84	54	49	64	847
Swanton	177	82	107	224	182	195	141	179	270	526	374	244	2,701
Big Bend (formerly Marfa)	707	710	824	696	907	1,104	993	923	885	1,068	930	783	10,530
Del Rio	2,913	2,372	2,307	5,044	6,561	7,983	4,960	5,177	3,709	4,242	4,573	3,953	53,794
El Centro	5,438	3,799	2,802	7,826	8,417	10,761	8,327	7,616	5,611	4,581	5,086	4,203	74,467
El Paso	6,451	5,244	4,030	8,768	10,584	13,483	12,632	10,343	8,432	8,654	8,321	7,457	104,399
Laredo	4,479	4,670	3,571	6,540	8,057	9,686	7,069	7,421	6,149	5,376	6,570	5,118	74,706
Rio Grande Valley (formerly McAllen)	5,414	5,053	4,636	8,102	8,732	10,149	9,618	8,916	7,423	8,826	8,542	7,536	92,947
San Diego	10,426	7,996	5,849	13,405	13,252	17,532	15,962	14,976	11,548	9,530	9,716	8,416	138,608
Tucson	26,530	24,890	17,349	34,913	45,312	72,095	64,563	53,132	42,013	39,114	38,740	33,120	491,771
Yuma	3,033	3,160	2,246	7,227	8,847	12,188	11,344	10,222	8,820	10,774	10,768	9,431	98,060
Coastal Border	1,230	1,037	1,103	1,153	1,016	936	1,016	839	981	516	817	510	11,154
Northern Border	774	591	592	738	688	932	704	878	929	1,197	1,082	854	9,959
Southwest Border	65,391	57,894	43,614	92,521	110,669	154,981	135,468	118,726	94,590	92,165	93,246	80,017	1,139,282
Monthly Total	67,395	59,522	45,309	94,412	112,373	156,849	137,188	120,443	96,500	93,878	95,145	81,381	1,160,395



United States Border Patrol

Total Illegal Alien Apprehensions By Month - FY 2005

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore	51	26	6	3	0	7	5	3	7	1	0	5	114
Miami	541	460	489	641	487	574	536	717	676	648	586	890	7,245
New Orleans	140	129	135	155	73	100	96	170	69	83	186	22	1,358
Ramey	188	112	205	33	106	63	163	67	103	101	156	322	1,619
Blaine	89	92	75	69	93	96	68	88	93	85	72	81	1,001
Buffalo	26	27	21	28	29	37	40	53	19	34	45	41	400
Detroit	200	176	133	164	205	193	132	113	122	107	132	116	1,793
Grand Forks	109	72	73	98	90	61	35	24	41	28	56	67	754
Havre	83	106	57	73	70	85	105	89	88	70	74	48	948
Houlton	17	47	31	27	26	6	19	10	11	18	8	13	233
Spokane	26	26	30	26	7	22	33	30	41	18	14	6	279
Swanton	193	186	141	95	105	152	105	123	241	274	214	106	1,935
Big Bend (formerly Marfa)	844	713	722	802	1,113	1,364	1,276	866	620	761	777	678	10,536
Del Rio	3,856	2,795	2,768	6,120	7,248	7,935	7,584	6,270	4,947	5,873	6,498	6,612	68,506
El Centro	3,723	2,798	1,772	4,963	5,926	6,632	6,010	5,352	3,829	3,712	5,047	5,958	55,722
El Paso	7,472	5,801	4,464	9,898	13,033	13,249	15,274	11,041	8,445	11,568	12,099	10,335	122,679
Laredo	4,691	3,997	3,367	6,331	7,530	8,112	9,043	7,569	5,699	6,623	6,635	5,749	75,346
Rio Grande Valley (formerly McAllen)	7,813	7,512	7,214	9,136	10,147	13,176	14,635	14,796	13,109	12,208	12,713	11,727	134,186
San Diego	6,702	5,428	4,632	9,390	10,864	12,750	16,534	15,114	10,921	10,010	11,798	12,761	126,904
Tucson	31,940	27,673	17,631	35,873	45,875	64,096	52,644	40,764	31,694	32,390	29,178	29,321	439,079
Yuma	8,872	8,418	5,836	10,507	12,039	15,734	17,062	14,051	11,522	11,809	11,988	10,600	138,438
Coastal Border	920	727	835	832	666	744	800	957	855	833	928	1,239	10,336
Northern Border	743	732	561	580	625	652	537	530	656	634	615	478	7,343
Southwest Border	75,913	65,135	48,406	93,020	113,775	143,048	140,062	115,823	90,786	94,954	96,733	93,741	1,171,396
Monthly Total	77,576	66,594	49,802	94,432	115,066	144,444	141,399	117,310	92,297	96,421	98,276	95,458	1,189,075



United States Border Patrol

Total Illegal Alien Apprehensions By Month - FY 2006

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Miami	438	543	693	506	452	450	592	725	523	358	295	457	6,032
New Orleans	48	176	214	372	300	230	136	402	238	289	325	323	3,053
Ramey	184	119	174	60	208	136	127	149	112	46	85	36	1,436
Blaine	71	103	49	54	54	50	83	85	64	66	64	68	811
Buffalo	120	107	71	85	96	101	111	178	154	174	148	172	1,517
Detroit	120	134	130	138	92	149	83	108	78	76	97	76	1,281
Grand Forks	59	48	41	56	36	18	66	49	26	31	48	40	518
Havre	26	58	28	40	62	32	43	63	56	47	52	61	568
Houlton	17	21	15	28	10	12	11	5	22	12	16	6	175
Spokane	8	23	8	10	3	12	26	6	19	6	19	45	185
Swanton	107	98	89	96	75	87	83	121	155	352	201	80	1,544
Big Bend (formerly Marfa)	655	590	563	739	908	910	746	711	478	392	403	425	7,520
Del Rio	4,840	4,016	2,910	4,839	5,854	5,636	4,555	2,633	2,106	1,947	1,683	1,617	42,636
El Centro	5,072	3,831	2,998	5,797	6,399	9,048	6,847	6,187	4,112	3,240	3,705	4,229	61,465
El Paso	11,027	8,191	5,668	11,941	14,457	18,668	15,238	12,239	7,664	6,970	5,027	5,166	122,256
Laredo	5,014	4,323	3,544	7,415	9,554	10,179	8,530	6,866	4,815	4,667	5,525	4,408	74,840
Rio Grande Valley (formerly McAllen)	10,060	9,111	7,128	9,533	10,444	13,080	11,264	11,649	7,516	7,109	7,020	6,614	110,528
San Diego	10,145	7,730	6,531	13,959	17,160	18,361	14,736	13,888	10,597	8,683	10,009	10,305	142,104
Tucson	27,316	24,270	16,447	33,229	43,153	63,583	51,588	40,190	25,049	21,187	23,256	22,806	392,074
Yuma	9,428	8,913	6,884	13,743	17,117	21,231	13,034	11,087	6,029	5,446	3,123	2,514	118,549
Coastal Border	670	838	1,081	938	960	816	855	1,276	873	693	705	816	10,521
Northern Border	528	592	431	507	428	461	506	615	574	764	645	548	6,599
Southwest Border	83,557	70,975	52,673	101,195	125,046	160,696	126,538	105,450	68,366	59,641	59,751	58,084	1,071,972
Monthly Total	84,755	72,405	54,185	102,640	126,434	161,973	127,899	107,341	69,813	61,098	61,101	59,448	1,089,092

*Livermore Sector was closed after FY 2004



Total Illegal Alien Apprehensions By Month - FY 2007

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Miami	669	429	405	751	531	475	477	573	905	648	651	606	7,120
New Orleans	379	379	222	327	398	492	336	336	340	354	155	300	4,018
Ramey	41	61	117	39	71	37	51	48	32	13	28	10	548
Blaine	61	36	62	61	59	87	50	67	82	67	60	57	749
Buffalo	141	155	104	123	125	170	167	178	219	223	233	353	2,191
Detroit	106	99	83	77	56	83	85	76	51	52	66	68	902
Grand Forks	56	32	45	25	40	48	49	33	35	40	54	40	497
Havre	68	56	53	41	60	40	27	27	31	17	31	35	486
Houlton	7	7	4	6	12	2	3	6	5	22	6	15	95
Spokane	30	18	23	30	22	37	24	29	42	47	27	12	341
Swanton	73	78	80	75	68	75	91	105	74	101	183	116	1,119
Big Bend (formerly Marfa)	368	442	383	556	532	677	602	407	362	439	403	365	5,536
Del Rio	1,618	1,701	1,051	2,044	2,421	3,314	2,699	1,858	1,579	1,862	1,440	1,333	22,920
El Centro	4,379	3,667	3,037	4,983	5,187	7,198	6,983	5,747	3,842	3,835	3,789	3,236	55,883
El Paso	6,183	5,098	4,189	6,570	7,482	10,537	8,957	6,741	5,632	5,109	4,969	3,997	75,464
Laredo	4,286	3,810	2,890	4,678	5,855	7,673	6,428	4,928	4,595	4,338	3,858	3,375	56,714
Rio Grande Valley (formerly McAllen)	5,772	4,549	3,649	5,798	6,172	8,431	7,645	7,736	5,791	6,225	6,331	5,331	73,430
San Diego	9,494	7,764	6,591	12,489	12,997	18,044	17,999	16,136	13,283	12,941	13,312	11,410	152,460
Tucson	25,135	21,323	16,136	29,459	34,148	52,692	49,044	41,789	34,103	30,373	24,388	19,649	378,239
Yuma	3,478	3,240	2,601	5,357	4,474	5,571	4,108	3,162	2,151	1,660	1,305	885	37,992
Coastal Border	1,089	869	744	1,117	1,000	1,004	864	957	1,277	1,015	834	916	11,686
Northern Border	542	481	454	438	442	542	496	521	539	569	660	696	6,380
Southwest Border	60,713	51,594	40,527	71,934	79,268	114,137	104,465	88,504	71,338	66,782	59,795	49,581	858,638
Monthly Total	62,344	52,944	41,725	73,489	80,710	115,683	105,825	89,982	73,154	68,366	61,289	51,193	876,704

*Livermore Sector was closed after FY 2004



Total Illegal Alien Apprehensions By Month - FY 2008

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Miami	553	496	685	456	539	699	634	433	519	277	335	394	6,020
New Orleans	382	429	329	650	305	365	462	318	439	296	251	77	4,303
Ramey	90	40	20	52	12	55	48	33	53	28	50	91	572
Blaine	52	75	40	91	69	108	101	67	75	88	82	106	954
Buffalo	382	290	295	228	260	304	233	222	260	259	291	315	3,339
Detroit	100	63	68	79	71	95	64	113	83	73	84	68	961
Grand Forks	67	91	41	24	38	22	41	30	52	41	38	56	541
Havre	63	121	13	33	19	3	23	28	33	21	38	32	427
Houlton	15	5	2	17	2	0	5	3	1	7	14	10	81
Spokane	30	40	17	18	27	15	20	10	34	38	34	57	340
Swanton	106	126	64	74	85	87	72	92	148	195	159	74	1,282
Big Bend (formerly Marfa)	386	388	451	350	612	613	527	586	369	416	415	278	5,391
Del Rio	1,679	1,059	945	1,961	2,462	2,667	2,286	1,745	1,708	1,482	1,618	1,149	20,761
El Centro	3,230	2,412	2,000	3,839	4,095	4,604	5,090	3,860	3,161	2,726	2,995	2,949	40,961
El Paso	3,605	2,648	2,015	3,470	3,944	3,129	2,808	2,035	1,811	1,634	1,615	1,598	30,312
Laredo	3,825	2,658	1,969	3,907	5,001	5,355	4,904	3,733	3,432	3,066	3,310	2,498	43,658
Rio Grande Valley (formerly McAllen)	5,989	4,695	3,974	5,216	6,880	8,543	9,417	7,967	6,308	5,562	6,103	4,819	75,473
San Diego	9,801	9,163	7,773	12,877	15,091	18,869	20,569	16,015	12,395	13,127	13,734	12,976	162,390
Tucson	21,730	18,231	11,721	26,347	34,309	45,239	45,442	32,845	24,289	21,093	18,406	18,044	317,696
Yuma	1,094	955	954	1,061	1,089	751	523	447	381	366	345	397	8,363
Coastal Border	1,025	965	1,034	1,158	856	1,119	1,144	784	1,011	601	636	562	10,895
Northern Border	815	811	540	564	571	634	559	565	686	722	740	718	7,925
Southwest Border	51,339	42,209	31,802	59,028	73,483	89,770	91,566	69,233	53,854	49,472	48,541	44,708	705,005
Monthly Total	53,179	43,985	33,376	60,750	74,910	91,523	93,269	70,582	55,551	50,795	49,917	45,988	723,825

*Livermore Sector was closed after FY 2004



Total Illegal Alien Apprehensions By Month - FY 2009

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Miami	342	302	317	401	383	382	407	314	343	413	358	463	4,425
New Orleans	386	267	309	259	282	429	317	257	264	253	271	233	3,527
Ramey	114	34	27	27	21	42	26	11	50	5	58	3	418
Blaine	103	93	68	96	68	85	61	65	39	49	67	49	843
Buffalo	254	210	201	176	194	220	225	263	250	198	240	241	2,672
Detroit	120	62	63	78	118	99	97	91	80	117	122	110	1,157
Grand Forks	52	53	37	29	26	29	22	41	35	50	49	49	472
Havre	31	21	11	29	30	23	30	21	31	22	18	16	283
Houlton	1	8	13	3	0	4	4	4	2	8	4	8	59
Spokane	32	44	22	20	18	14	15	16	17	19	38	22	277
Swanton	65	80	106	36	77	71	74	111	99	125	104	95	1,043
Big Bend (formerly Marfa)	539	459	472	533	689	590	458	511	569	484	575	481	6,360
Del Rio	1,321	1,064	872	1,604	1,908	2,231	1,619	1,426	1,304	1,383	1,321	1,029	17,082
El Centro	2,619	2,176	1,691	2,969	2,904	4,141	3,314	2,955	2,811	2,449	2,767	2,725	33,521
El Paso	1,469	1,153	866	1,344	1,435	1,508	1,344	1,238	1,208	1,160	1,181	1,093	14,999
Laredo	2,709	2,465	1,932	3,970	3,718	4,538	4,168	3,722	3,283	3,512	3,671	2,881	40,569
Rio Grande Valley (formerly McAllen)	5,092	4,259	3,341	4,575	5,207	5,479	6,107	5,293	5,094	5,509	6,025	5,008	60,989
San Diego	10,036	7,954	6,552	10,246	11,678	16,472	12,618	11,000	10,278	8,655	6,743	6,489	118,721
Tucson	18,814	12,844	9,862	18,649	20,941	31,432	28,072	24,083	20,842	20,146	20,810	15,178	241,673
Yuma	339	406	359	612	731	951	793	656	655	545	429	475	6,951
Coastal Border	842	603	653	687	686	853	750	582	657	671	687	699	8,370
Northern Border	658	571	521	467	531	545	528	612	553	588	642	590	6,806
Southwest Border	42,938	32,780	25,947	44,502	49,211	67,342	58,493	50,884	46,044	43,843	43,522	35,359	540,865
Monthly Total	44,438	33,954	27,121	45,656	50,428	68,740	59,771	52,078	47,254	45,102	44,851	36,648	556,041

*Livermore Sector was closed after FY 2004



Total Illegal Alien Apprehensions By Month - FY 2010

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Miami	463	478	416	265	335	326	370	427	442	367	427	335	4,651
New Orleans	247	179	173	303	303	394	404	218	223	204	244	279	3,171
Ramey	41	20	10	8	23	32	40	44	25	4	94	57	398
Blaine	50	69	52	59	57	58	54	44	53	65	70	42	673
Buffalo	241	214	207	168	216	252	207	231	189	135	180	182	2,422
Detroit	168	154	157	129	126	122	110	98	128	113	165	199	1,669
Grand Forks	55	47	36	26	37	45	39	80	23	34	74	47	543
Havre	31	23	17	11	18	54	30	32	20	12	20	22	290
Houlton	3	2	0	0	0	12	5	10	6	12	6	0	56
Spokane	35	21	14	19	15	27	25	34	33	42	51	40	356
Swanton	71	101	68	58	128	132	97	136	124	233	197	77	1,422
Big Bend (formerly Marfa)	530	421	373	433	484	660	575	493	415	280	295	329	5,288
Del Rio	1,119	897	697	1,234	1,245	1,874	1,791	1,718	1,326	767	1,095	931	14,694
El Centro	2,589	2,412	2,196	2,688	2,836	4,408	3,419	3,126	2,440	2,331	2,075	2,042	32,562
El Paso	1,007	894	725	1,124	1,140	1,528	1,359	1,380	1,005	725	732	632	12,251
Laredo	2,613	2,130	1,802	2,526	3,173	4,433	4,528	3,813	3,475	1,857	2,819	2,118	35,287
Rio Grande Valley (formerly McAllen)	4,236	3,688	2,987	3,658	4,845	7,141	7,139	7,477	5,595	3,832	5,329	3,839	59,766
San Diego	5,017	4,738	4,636	6,413	6,982	9,061	7,115	5,858	5,092	5,113	4,528	4,012	68,565
Tucson	23,197	16,986	10,907	16,122	21,266	31,197	28,579	22,572	13,160	10,303	9,280	8,633	212,202
Yuma	582	649	711	586	819	1,059	732	608	447	401	262	260	7,116
Coastal Border	751	677	599	576	661	752	814	689	690	575	765	671	8,220
Northern Border	654	631	551	470	597	702	567	665	576	646	763	609	7,431
Southwest Border	40,890	32,815	25,034	34,784	42,790	61,361	55,237	47,045	32,955	25,609	26,415	22,796	447,731
Monthly Total	42,295	34,123	26,184	35,830	44,048	62,815	56,618	48,399	34,221	26,830	27,943	24,076	463,382

*Livermore Sector was closed after FY 2004



Total Illegal Alien Apprehensions By Month - FY 2011

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Miami	401	441	349	447	364	466	324	325	309	330	340	305	4,401
New Orleans	231	144	121	156	132	105	109	124	111	63	114	99	1,509
Ramey	55	25	59	47	44	54	46	82	42	90	38	60	642
Blaine	68	42	37	54	31	69	35	53	46	48	64	44	591
Buffalo	231	190	139	161	148	203	174	158	176	157	188	189	2,114
Detroit	177	143	110	133	121	175	118	103	110	96	126	119	1,531
Grand Forks	47	34	32	24	37	56	20	24	49	52	44	49	468
Havre	46	23	16	24	21	17	32	25	4	9	31	22	270
Houlton	4	4	0	1	1	9	1	1	10	5	2	3	41
Spokane	32	28	20	5	26	28	20	23	24	21	41	25	293
Swanton	78	74	37	67	67	50	53	53	50	121	110	55	815
Big Bend (formerly Marfa)	375	290	282	332	300	457	512	350	296	235	311	296	4,036
Del Rio	1,043	837	704	899	1,399	2,132	1,977	1,499	1,525	1,386	1,356	1,387	16,144
El Centro	2,201	1,851	1,734	2,135	2,569	3,772	3,563	3,278	2,904	2,225	2,074	1,885	30,191
El Paso	732	660	622	779	911	1,354	1,380	904	816	794	711	682	10,345
Laredo	2,286	2,174	1,797	2,285	2,943	4,686	3,891	3,168	3,205	2,913	3,262	3,443	36,053
Rio Grande Valley (formerly McAllen)	3,628	3,625	3,349	3,485	4,233	6,806	6,502	5,953	5,409	5,276	5,973	5,004	59,243
San Diego	4,344	3,480	3,233	3,379	3,977	4,811	4,031	3,474	3,109	3,016	2,863	2,730	42,447
Tucson	11,165	9,097	7,354	10,131	11,790	17,056	13,816	12,088	9,585	6,923	7,270	7,010	123,285
Yuma	391	391	354	501	664	940	579	522	317	402	346	426	5,833
Coastal Border	687	610	529	650	540	625	479	531	462	483	492	464	6,552
Northern Border	683	538	391	469	452	607	453	440	469	509	606	506	6,123
Southwest Border	26,165	22,405	19,429	23,926	28,786	42,014	36,251	31,236	27,166	23,170	24,166	22,863	327,577
Monthly Total	27,535	23,553	20,349	25,045	29,778	43,246	37,183	32,207	28,097	24,162	25,264	23,833	340,252

*Livermore Sector was closed after FY 2004



United States Border Patrol

Total Illegal Alien Apprehensions By Month - FY 2012

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Miami	216	293	195	249	180	156	159	226	137	249	207	242	2,509
New Orleans	49	48	39	40	42	24	22	58	22	12	21	97	474
Ramey	72	100	41	51	50	68	41	39	123	41	33	43	702
Blaine	50	58	47	41	53	51	42	28	40	41	41	45	537
Buffalo	118	87	56	78	90	100	89	106	61	126	104	128	1,143
Detroit	127	109	57	62	67	95	111	67	82	67	55	51	950
Grand Forks	58	46	16	29	13	30	33	26	36	43	32	56	418
Havre	21	9	18	4	9	11	9	5	5	3	4	4	102
Houlton	0	3	2	1	0	1	2	1	7	4	9	11	41
Spokane	34	18	23	24	18	21	35	22	25	40	34	23	317
Swanton	40	43	43	26	51	48	47	52	103	120	69	60	702
Big Bend (formerly Marfa)	284	317	288	323	423	450	393	304	300	303	333	246	3,964
Del Rio	1,364	1,289	871	1,204	1,788	2,375	2,791	2,480	2,123	1,942	1,770	1,723	21,720
El Centro	1,946	1,698	1,401	1,655	2,041	2,857	2,805	2,622	2,107	1,896	1,411	1,477	23,916
El Paso	647	662	534	625	812	1,151	888	823	840	793	984	919	9,678
Laredo	2,835	2,846	1,853	3,180	3,855	5,154	5,100	4,478	4,019	3,670	4,306	3,576	44,872
Rio Grande Valley (formerly McAllen)	6,201	5,513	4,285	5,514	6,709	9,622	11,160	11,583	10,112	9,023	9,295	8,745	97,762
San Diego	2,439	2,185	2,136	2,185	2,439	3,064	2,879	2,787	2,170	2,165	2,020	1,992	28,461
Tucson	9,306	8,361	7,100	10,209	12,836	16,559	14,095	11,343	8,636	6,856	7,116	7,583	120,000
Yuma	590	497	515	819	676	986	517	546	362	330	332	330	6,500
Coastal Border	337	441	275	340	272	248	222	323	282	302	261	382	3,685
Northern Border	448	373	262	265	301	357	368	307	359	444	348	378	4,210
Southwest Border	25,612	23,368	18,983	25,714	31,579	42,218	40,628	36,966	30,669	26,978	27,567	26,591	356,873
Monthly Total	26,397	24,182	19,520	26,319	32,152	42,823	41,218	37,596	31,310	27,724	28,176	27,351	364,768

*Livermore Sector was closed after FY 2004



Total Illegal Alien Apprehensions By Month - FY 2013

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Miami	248	134	130	135	89	92	157	92	113	212	171	165	1,738
New Orleans	49	74	47	32	49	27	46	28	15	30	47	56	500
Ramey	24	56	45	39	107	194	11	27	99	43	164	115	924
Blaine	37	34	33	21	32	31	24	26	34	32	25	31	360
Buffalo	106	54	60	53	47	47	73	54	78	83	58	83	796
Detroit	65	58	64	58	44	50	49	43	42	67	59	51	650
Grand Forks	32	27	12	19	36	31	39	36	52	73	55	57	469
Havre	4	2	0	3	3	2	3	9	9	8	21	24	88
Houlton	15	1	0	0	1	2	2	0	7	1	3	5	37
Spokane	33	36	17	19	13	19	28	20	26	33	34	21	299
Swanton	35	21	29	17	41	50	53	57	42	72	48	66	531
Big Bend (formerly Marfa)	356	238	213	340	400	416	473	341	232	219	218	238	3,684
Del Rio	1,792	1,715	1,135	1,617	2,223	2,771	2,778	2,332	1,695	2,039	1,817	1,596	23,510
El Centro	1,527	1,408	1,101	1,103	1,340	2,098	1,972	1,513	1,222	1,035	1,056	931	16,306
El Paso	977	860	629	776	1,030	1,176	1,217	1,163	857	852	852	765	11,154
Laredo	3,829	3,537	2,835	3,280	4,628	5,903	5,621	5,338	4,029	4,212	3,944	3,593	50,749
Rio Grande Valley (formerly McAllen)	8,869	8,352	6,587	7,190	10,828	16,115	18,455	17,522	14,275	15,217	16,253	14,790	154,453
San Diego	1,922	1,924	1,795	2,150	2,227	3,062	2,833	2,854	2,324	2,313	2,069	2,023	27,496
Tucson	9,224	9,185	8,481	9,871	11,831	14,990	14,051	12,119	9,357	7,014	7,278	7,538	120,939
Yuma	433	417	467	594	535	762	812	674	445	329	310	328	6,106
Coastal Border	321	264	222	206	245	313	214	147	227	285	382	336	3,162
Northern Border	327	233	215	190	217	232	271	245	290	369	303	338	3,230
Southwest Border	28,929	27,636	23,243	26,921	35,042	47,293	48,212	43,856	34,436	33,230	33,797	31,802	414,397
Monthly Total	29,577	28,133	23,680	27,317	35,504	47,838	48,697	44,248	34,953	33,884	34,482	32,476	420,789

*Livermore Sector was closed after FY 2004



Total Illegal Alien Apprehensions By Month - FY 2014

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Miami	131	146	125	228	178	113	151	199	213	134	217	199	2,034
New Orleans	58	48	57	55	90	103	114	88	86	82	72	97	950
Ramey	133	120	48	79	39	79	38	86	133	77	73	53	958
Blaine	16	22	18	29	26	19	36	27	19	28	14	18	272
Buffalo	58	39	52	36	47	87	64	81	54	79	97	47	741
Detroit	48	53	51	34	55	35	40	49	86	66	70	60	647
Grand Forks	59	45	36	42	49	85	65	63	71	81	73	98	767
Havre	18	10	2	5	6	2	1	13	12	3	7	12	91
Houlton	3	4	2	3	3	1	2	13	1	4	8	1	45
Spokane	35	24	15	24	16	31	17	22	19	19	16	31	269
Swanton	44	25	45	30	21	17	31	33	57	69	64	70	506
Big Bend (formerly Marfa)	316	260	241	278	522	445	403	374	414	341	302	200	4,096
Del Rio	1,587	1,586	1,360	1,514	2,133	2,823	2,616	3,432	2,857	1,830	1,279	1,238	24,255
El Centro	1,193	1,077	987	1,126	1,365	1,502	1,441	1,353	1,203	1,250	1,095	919	14,511
El Paso	885	845	738	813	1,060	1,278	1,244	1,371	1,221	939	948	997	12,339
Laredo	3,638	3,026	2,567	2,756	3,838	5,087	5,117	4,737	3,946	3,546	2,960	2,831	44,049
Rio Grande Valley (formerly McAllen)	15,192	14,170	13,540	12,255	16,808	25,398	28,624	37,510	38,446	24,938	17,273	12,239	256,393
San Diego	2,218	2,153	2,091	2,548	2,469	3,378	3,035	2,863	2,438	2,497	2,132	2,089	29,911
Tucson	9,785	8,334	7,629	6,825	7,566	8,925	8,473	8,407	6,867	5,019	5,105	4,980	87,915
Yuma	498	445	375	553	642	760	549	636	470	348	294	332	5,902
Coastal Border	322	314	230	362	307	295	303	373	432	293	362	349	3,942
Northern Border	281	222	221	203	223	277	256	301	319	349	349	337	3,338
Southwest Border	35,312	31,896	29,528	28,668	36,403	49,596	51,502	60,683	57,862	40,708	31,388	25,825	479,371
Monthly Total	35,915	32,432	29,979	29,233	36,933	50,168	52,061	61,357	58,613	41,350	32,099	26,511	486,651

*Livermore Sector was closed after FY 2004



Total Illegal Alien Apprehensions By Month - FY 2015

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Miami	90	50	143	121	79	116	101	110	203	168	346	225	1,752
New Orleans	115	98	100	79	78	35	39	75	71	72	32	55	849
Ramey	55	76	32	71	12	60	44	25	39	74	9	60	557
Blaine	37	47	29	25	20	16	14	19	17	23	23	12	282
Buffalo	28	34	35	21	19	20	15	16	18	40	27	18	291
Detroit	75	68	109	42	35	30	44	36	72	32	54	40	637
Grand Forks	87	78	72	53	74	65	73	40	40	76	69	62	789
Havre	5	3	3	3	10	6	5	3	2	2	18	4	64
Houlton	1	2	8	4	6	0	3	0	0	4	2	2	32
Spokane	24	15	10	15	23	12	15	14	7	18	13	24	190
Swanton	26	23	25	6	19	27	14	16	35	39	68	43	341
Big Bend (formerly Marfa)	302	232	336	233	330	453	438	567	373	428	600	739	5,031
Del Rio	1,246	985	1,051	985	1,291	1,718	2,100	2,083	1,928	1,752	1,918	1,956	19,013
El Centro	894	842	980	902	991	1,355	1,244	1,295	1,063	1,072	1,058	1,124	12,820
El Paso	904	924	921	874	859	1,455	1,516	1,335	1,410	1,417	1,436	1,444	14,495
Laredo	3,276	2,540	2,367	2,776	2,864	3,093	3,497	3,127	2,958	3,110	3,072	3,208	35,888
Rio Grande Valley (formerly McAllen)	12,031	11,466	11,035	8,425	9,557	11,817	12,602	14,103	13,750	13,719	14,750	14,002	147,257
San Diego	2,133	1,924	2,280	2,111	2,466	2,876	2,284	2,308	2,081	1,985	1,883	1,959	26,290
Tucson	5,261	5,303	5,610	4,869	5,553	6,256	5,543	6,105	5,081	4,071	4,733	5,012	63,397
Yuma	403	425	439	339	465	768	526	653	659	834	789	842	7,142
Coastal Border	260	224	275	271	169	211	184	210	313	314	387	340	3,158
Northern Border	283	270	291	169	206	176	183	144	191	234	274	205	2,626
Southwest Border	26,450	24,641	25,019	21,514	24,376	29,791	29,750	31,576	29,303	28,388	30,239	30,286	331,333
Monthly Total	26,993	25,135	25,585	21,954	24,751	30,178	30,117	31,930	29,807	28,936	30,900	30,831	337,117

*Livermore Sector was closed after FY 2004



United States Border Patrol

Total Illegal Alien Apprehensions By Month - FY 2016

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Miami	271	206	337	207	181	310	331	266	232	286	274	304	3,205
New Orleans	74	59	48	40	53	50	76	57	56	96	72	83	764
Ramey	21	57	64	28	68	63	61	78	72	66	43	73	694
Blaine	27	28	13	13	21	33	19	20	17	28	30	22	271
Buffalo	15	4	7	22	14	17	29	21	15	37	27	18	226
Detroit	55	38	58	35	54	61	51	78	67	64	89	66	716
Grand Forks	40	40	25	48	26	49	35	34	34	66	62	46	505
Havre	4	5	1	4	1	2	9	4	2	2	7	2	43
Houlton	6	0	1	1	2	2	2	7	1	2	1	0	25
Spokane	4	16	9	4	6	11	18	56	20	19	20	23	206
Swanton	25	13	25	10	14	26	18	14	34	35	30	47	291
Big Bend (formerly Marfa)	735	637	690	388	458	616	739	491	292	344	326	650	6,366
Del Rio	1,873	1,798	2,185	1,531	1,780	2,022	2,224	2,588	1,918	1,833	1,445	1,881	23,078
El Centro	1,214	1,239	1,253	1,061	1,342	1,775	2,097	2,000	1,719	1,669	2,047	2,032	19,448
El Paso	1,639	1,679	2,187	1,148	1,399	2,158	2,408	2,481	2,369	2,503	2,708	2,955	25,634
Laredo	3,146	3,249	2,995	2,454	2,895	3,196	3,654	3,403	2,906	2,647	2,888	3,129	36,562
Rio Grande Valley (formerly McAllen)	15,036	15,297	17,736	9,398	9,660	13,325	16,688	18,291	15,972	16,519	19,155	19,753	186,830
San Diego	2,081	2,022	2,196	2,525	2,504	3,108	3,329	3,118	2,522	2,555	2,748	3,183	31,891
Tucson	5,899	5,791	6,263	4,572	5,245	6,142	5,784	6,574	5,427	4,364	4,303	4,527	64,891
Yuma	1,101	1,126	1,509	681	789	974	1,166	1,391	1,325	1,289	1,428	1,391	14,170
Coastal Border	366	322	449	275	302	423	468	401	360	448	389	460	4,663
Northern Border	176	144	139	137	138	201	181	234	190	253	266	224	2,283
Southwest Border	32,724	32,838	37,014	23,758	26,072	33,316	38,089	40,337	34,450	33,723	37,048	39,501	408,870
Monthly Total	33,266	33,304	37,602	24,170	26,512	33,940	38,738	40,972	35,000	34,424	37,703	40,185	415,816

*Livermore Sector was closed after FY 2004



United States Border Patrol

Total Illegal Alien Apprehensions By Month - FY 2017

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Miami	178	186	329	161	194	150	193	221	173	195	196	104	2,280
New Orleans	76	98	81	121	94	88	50	105	57	52	74	24	920
Ramey	77	41	62	99	15	15	39	17	0	8	15	0	388
Blaine	45	36	28	20	23	21	16	12	23	27	27	10	288
Buffalo	9	19	12	24	66	16	33	76	48	55	37	52	447
Detroit	64	30	34	43	71	143	119	112	118	113	132	91	1,070
Grand Forks	19	25	23	40	48	56	57	44	42	51	58	33	496
Havre	1	3	2	0	4	0	4	6	4	7	7	1	39
Houlton	5	0	0	1	0	1	0	5	1	5	8	4	30
Spokane	16	10	7	5	18	22	14	14	50	19	17	16	208
Swanton	10	22	25	19	43	43	25	41	51	63	73	34	449
Big Bend (formerly Marfa)	697	603	477	473	383	357	413	552	378	492	563	614	6,002
Del Rio	2,106	1,880	1,817	1,243	1,104	746	589	740	761	760	798	932	13,476
El Centro	2,441	1,850	1,870	1,796	1,196	871	849	1,134	1,280	1,478	1,880	1,988	18,633
El Paso	3,973	4,105	3,948	2,779	1,575	978	906	1,032	1,180	1,395	1,782	1,540	25,193
Laredo	3,350	3,194	2,460	2,265	1,710	1,256	1,304	1,722	1,839	2,120	2,143	2,097	25,460
Rio Grande Valley (formerly McAllen)	22,642	24,686	23,418	15,580	7,855	4,147	3,942	4,882	5,817	7,107	8,650	8,836	137,562
San Diego	2,934	2,947	3,099	2,927	1,808	1,356	1,392	1,724	1,652	1,764	2,241	2,242	26,086
Tucson	5,924	5,912	4,303	3,357	2,589	2,148	1,487	2,199	2,632	2,177	2,913	3,016	38,657
Yuma	2,117	2,034	1,859	1,156	534	336	245	534	548	894	1,318	1,272	12,847
Coastal Border	331	325	472	381	303	253	282	343	230	255	285	128	3,588
Northern Border	169	145	131	152	273	302	268	310	337	340	359	241	3,027
Southwest Border	46,184	47,211	43,251	31,576	18,754	12,195	11,127	14,519	16,087	18,187	22,288	22,537	303,916
Monthly Total	46,684	47,681	43,854	32,109	19,330	12,750	11,677	15,172	16,654	18,782	22,932	22,906	310,531

*Livermore Sector was closed after FY 2004



United States Border Patrol

Total Illegal Alien Apprehensions By Month - FY 2018

SECTOR	October	November	December	January	February	March	April	May	June	July	August	September	Yearly Total
Livermore*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Miami	196	168	164	189	189	202	205	172	130	244	173	137	2,169
New Orleans	46	62	27	86	63	54	63	35	115	43	102	102	798
Ramey	7	17	14	77	18	21	9	36	5	20	53	3	280
Blaine	19	22	22	15	10	54	40	35	27	22	43	50	359
Buffalo	48	23	17	25	16	29	32	46	55	33	28	32	384
Detroit	119	150	86	193	159	175	166	158	280	168	127	149	1,930
Grand Forks	48	40	38	21	30	41	31	41	38	41	55	37	461
Havre	10	13	2	0	2	1	1	0	6	4	6	2	47
Houlton	0	2	5	3	3	6	9	3	4	6	3	8	52
Spokane	30	16	17	22	19	36	27	32	29	39	52	28	347
Swanton	28	29	32	30	47	66	36	66	105	92	67	138	736
Big Bend (formerly Marfa)	819	828	802	543	838	703	808	743	375	456	585	545	8,045
Del Rio	1,046	1,186	1,113	1,083	1,306	1,466	1,451	1,486	1,462	1,365	1,506	1,363	15,833
El Centro	2,194	2,123	2,110	2,052	1,954	2,697	2,790	2,683	2,327	2,531	2,821	2,948	29,230
El Paso	1,489	1,647	1,713	1,607	1,737	2,782	2,671	3,510	3,560	2,890	3,585	4,370	31,561
Laredo	2,451	2,283	1,982	2,296	2,671	3,652	3,370	3,210	2,586	2,600	2,785	2,755	32,641
Rio Grande Valley (formerly McAllen)	9,722	11,726	11,668	9,484	9,611	14,140	15,993	17,491	14,703	13,238	16,744	17,742	162,262
San Diego	2,377	2,760	2,764	3,171	3,107	4,101	3,644	3,418	3,014	3,098	3,507	3,630	38,591
Tucson	3,854	4,562	4,400	3,925	3,824	5,785	5,012	4,760	4,146	3,241	3,627	5,036	52,172
Yuma	1,536	1,970	2,443	1,814	1,618	2,064	2,504	3,038	1,916	1,880	2,364	3,097	26,244
Coastal Border	249	247	205	352	270	277	277	243	250	307	328	242	3,247
Northern Border	302	295	219	309	286	408	342	381	544	405	381	444	4,316
Southwest Border	25,488	29,085	28,995	25,975	26,666	37,390	38,243	40,339	34,089	31,299	37,524	41,486	396,579
Monthly Total	26,039	29,627	29,419	26,636	27,222	38,075	38,862	40,963	34,883	32,011	38,233	42,172	404,142

*Livermore Sector was closed after FY 2004

EXHIBIT 6

 Official website of the Department of Homeland Security



U.S. Customs and
Border Protection
(/)

Transcript: March, FY19 Year to Date Statistics Press Call

Release Date: April 10, 2019

Event: March FY 2019 Year to Date Statistics Press Call

Date: Tuesday, April 9, 2019

Time: 2:15 pm EST

Location: 1-800-381-7839

CBP Participants:

Brian Hastings; United States Border Patrol, Chief of Law Enforcement Operations Directorate

Randy J. Howe; Office of Field Operations, Executive Director of Operations

Carlos Diaz; Office of Public Affairs, Acting Media Director

Acting Media Director Carlos Diaz:

Good afternoon, everyone, and thank you for joining us today. My name is Carlos Diaz; I am the Acting Director for Media Relations for the US Customs and Border Protection Office of Public Affairs. I'll be your host this afternoon.

Today US Customs and Border Protection will provide an update of its immigration statistics. This data includes information from fiscal year '19, which covers October 2018 to March 2019. The contents of this call are embargo until the completion of the call.

Before we move forward, a little overview and admin notes. CBP will be hosting this call from Washington, DC. The principle officials who will be on the call today are for US Border Patrol, Chief of Law Enforcement Operations Directorate, Brian Hastings and for the Office of Field Operations, Executive Director of Operations, Randy Howe.

Both Chief Hastings and Executive Director Howe will provide remarks which will be followed by a question and answer section. Before we begin here are some ground rules for today's call. The contents of the call are embargo until the conclusion of the call. This call is about our updated immigration numbers. Other topics outside this will be addressed at another time.

Chief Hastings will provide opening remarks followed by remarks from Executive Director Howe. During the question and answer section please identify yourself and your organization and try to limit your questions to one to allow participation to as many of your colleagues as we can. If there are any follow up questions please send them to

CBPMediaRelations@CBP.dhs.gov (mailto:CBPMediaRelations@CBP.dhs.gov).

Also all materials, including graphics, press release, and other pertinent information should be available on or about 3:30 on our website. This call is being recorded. And now, Chief Hastings and Executive Director Howe. Chief Hastings.

Chief Brian Hastings:

Thank you. Good afternoon. My name again is Brian Hastings. I'm the Chief of Operations here at US Border Patrol Headquarters. And today I'm going to provide you with some updates about what we're seeing on our Southwestern border. The Border Patrol is facing an unprecedented humanitarian and border security crisis. We're seeing record numbers of apprehensions, large groups and high numbers in custody. And we've arrived at the breaking point.

As I briefed last month we saw record numbers of family units and unaccompanied juvenile apprehensions in February. And unfortunately March apprehension levels are again record-setting and cause dire concerns for us.

In the month of March, CBP encountered over 103,000 individuals on our Southwestern border. 92,000 of those were US Border Patrol apprehensions which is an increase of 35% over February levels. Over 30,000 of the Border Patrol apprehensions were single adults; 8900 were unaccompanied children and 53,000 -- nearly 58% of USBP apprehensions -- were family units primarily from the Northern Triangle, Guatemala, Honduras and El Salvador.

In the first half of the fiscal year FY 2019 Border Patrol has apprehended over 385,000 individuals on the Southwest border. This is more than double the apprehensions during the same timeframe last fiscal year and it exceeds all of FY 2017 apprehension totals.

As I briefed before, this issue just isn't simply about pure volume and flow but specifically the rapid increase in family units specifically from the Northern Triangle. Family unit apprehensions have increased by approximately 375% as compared to the same timeframe last fiscal year.

As more and more adults with children are released into the US pending their immigration proceedings word of mouth and social media have spread news and more immigrants are emboldened to make the dangerous journey.

Wanted to cover a few more specifically capacity issues with Border Patrol. So this past month the increase in those apprehensions that I was talking about earlier has led to a breaking point specifically we've seen an average of 3000 apprehensions each day in the month of March and weren't able to keep pace with processing and transferring those individuals out of our custody as more are quickly coming in to replace those that are being processed.

Generally we want to see our custody numbers around 4500 across the Southwest border. However two weeks ago we saw our in-custody numbers up to critical levels of 13,500 in custody. Our partners at ICE and HHS do not have the bed space to address this crisis we're experiencing. And that's particularly true for family units as ICE is only able to place a fraction of those family units into family residential centers. They release the others with a notice to appear before an immigration judge.

The system backups have resulted in individuals spending additional time in Border Patrol custody in increasingly crowded conditions. This is not something we were designed for. This is not something our facilities were designed for, holding this many people in facilities set up for short term detention for this long of amount of time in custody. It poses a safety risk for both agents and those in our custody.

To address this throughout March we worked closely with our partners to maximize our use of resources. We've detailed 175 additional Border Patrol agents to the Southwest border. We've also allocated additional overtime hours. We've also worked closely with the Office of Field Operation to detail 540 CBPO -- CPB Officers -- to Border Patrol processing facilities to assist us with the processing efforts.

This has been an all hands on deck for us for processing necessitating even in many conditions - many cases a leadership has shut down operational components and operational taskings such as checkpoint operations, they've cancelled training, they've pulled detail agents back to assist with processing, caring and feeding for those in their custody.

As a last resort scenario on March 19 the Border Patrol began releasing noncriminal processed family units to NGOs directly. And when NGOs could not support, releasing to bus stations. On March 19 the Border Patrol was forced to release on order of recognizance and today we have released over 11,000 processed noncriminal family members.

Before taking this action all sectors worked closely with federal, state, local and community leaders to communicate the intent for these releases. The local NGOs were also notified, but I would add that many of the NGOs, like us, are already over capacity and cannot support further releases. These are the same individuals that would be released by ERO but we have chosen to release them as it expedites transportation and frees space in our facilities.

The combined efforts have made some progress in mitigating the capacity issues but the apprehensions continue to rise. As of this morning at 9 o'clock, Border Patrol had over 10,000 individuals in custody. We're currently overcapacity primarily at the following three sectors: Rio Grande Valley, El Paso and Yuma sector.

Another phenomena that we've talked about in the past, and I'll mention again, is the large groups that we're seeing. Currently as of March 28 the Border Patrol set another unsettling milestone by reaching 100 large groups that we've seen so far this fiscal year. Again, we define a large group as a group over 100.

To put that in a little bit of context, in FY '18 we had a total of 13 large groups, fiscal year '17 two large groups as this trend intensifies, the already substantial humanitarian and border security crisis. Just last week we had four large groups encountered in RGV in a single day consisting of almost 500 individuals. On Tuesday, March 26, again in just one day, RGV encountered three large groups totaling 386 individuals.

All this comes at a cost specifically resources, both financially and manpower, and more critically in national security. We're shifting large portions of personnel and resources away from our border security mission to address these large groups, family units and unaccompanied children. This poses significant increase to the risk of national security. We're committed to addressing this humanitarian need but the current situation is unsustainable for Border Patrol operations.

The resources that we're pulling away from national security have a negative effect on law enforcement mission. Currently each day we're pulling approximately 40% of our agents on the Southwest border, and diverting them specifically for the humanitarian need, that is to care for, transport and process family units and UACs.

Not only does this divert our resources, but as we've seen recently, smuggling organizations are utilizing these large groups as a diversion to enable the movement of smuggling of narcotics. Approximately 60 large groups so far this year have been encountered in remote locations which causes us particular concern because they're generally the furthest away from our processing centers, medical services, contract transportation and even our stations.

Additionally Border Patrol agents are spending more time than ever providing transportation and hospital watch for medical care of those in our custody. The increase in flow combined with the stress of the journey, crowded conveyance and flu season have resulted in significant increases for referrals to medical providers.

Currently on average the Border Patrol is sending 63 people per day for additional medical treatment. This is the highest we have seen this number since we began tracking this. We're currently on track to refer over 31,000 people for medical treatment this year as compared to only 12,000 during fiscal year 2018.

Since December 22, 2018, US Border Patrol has spent over 100,000 hours -- agent hours -- at a hospital or medical facility. In the past three months alone, Border Patrol has expended over \$4 million in salary expenses simply to perform hospital watch for detainees. We project this cost will actually reach almost \$12 million in salary expenditures for the year in order just to perform hospital watch for detainees in our custody.

In addition to hospital watch, costs associated with overtime and detail assignments continue to rise. The cost of additional consumables, transportation, medical screening and humanitarian support efforts have depleted US Border Patrol's operational budget.

In fiscal year 2019 to date we've expended over \$90 million on humanitarian support costs. We project we will expend over \$100 million by the end of the year. Most concerning for us looking ahead is summer is approaching, this typically historically has meant increased flow from what we've seen in prior years and we're concerned with the high temperatures paired with the dangerous and crowded conditions on the journey that puts this vulnerable population of family units and unaccompanied children at risk.

We know the continued release of family units will only increase the draw but Border Patrol has no other option at this time due to our capability or capacity limitations and those of our partners. The only way to address this trend is to change the message that if you bring a child you'll be allowed entry into our country. To do that, we need an immigration system that allows the government to maintain custody of the family unit through an expeditious immigration proceeding.

And that's all I have. I'll go ahead and turn it over to XD Field Operations, Randy Howe.

Executive Director Randy J. Howe:

Thanks Brian. Good afternoon everyone. As Chief Hastings said, CBP is facing an unprecedented humanitarian and border security crisis along our Southwest border. In order to manage this operational crisis the Office of Field Operations has redirected and surged 545 frontline officers from our Southwest border ports of entry. These redirected officers are assisting Border Patrol agents as they process and care for record numbers of migrants.

CBP Officers are helping with the care and custody, processing, transportation and hospital watch of migrants. These CBP Officers that were redirected to assist Border Patrol are from three field offices; 300 from Laredo Field Office, 194 from El Paso and 51 from the San Diego Field Office. As a result, travelers and shippers are experiencing increased wait times as they approach the border along the Southwest border for all modes of traffic including pedestrian, vehicles and commercial trucks.

Just to give you a snapshot of what the impact we've seen since we've been doing this, just yesterday in Brownsville, Texas our cargo processing wait time was 120 minutes. Same day last year was there was no wait. El Paso, Bridge of the Americas, in the passenger arena we had 160 minute wait for passenger vehicles and last year same day was a 45 minute wait.

Another example is in Otay Mesa, Southern California, our cargo processing we had a wait time yesterday of 270 minutes and the previous year the day we had a 50 minute wait. At the end of the day yesterday we had 175 trucks that were unprocessed.

Our field leaders at the ports of entry are reviewing their operations taking into account the relocation of their officers to the Border Patrol sectors and they're adjusting hours and levels of service where necessary to facilitate the lawful trade and travel through the ports. The ports of entry field leaders have been in frequent communication with local authorities and trade stakeholders in order to mitigate any impact.

That initial 545 officers that we assigned to Border Patrol is an immediate response to a crisis that is overwhelming their capacity. That number of CBP Officers assigned to us as Border Patrol agents will fluctuate based on Border Patrol's operational needs. CBP Office of Field Operation is prepared to continue to support the Border Patrol as we work through this border crisis together.

To address the Border Patrol's urgent need we are soliciting CBP Officer volunteers from our CBP airport operations and our northern border to continue to support the Southwest border Border Patrol.

Field Operations headquarters will maintain a cadre of ready reserve CBP Officer volunteers to replace and augment the CBP Officers already assigned to the Border Patrol as necessary.

The length of time our officers will be needed to support the Border Patrol is based on the operational environment on the ground. But CBP Field Operations is prepared to adjust as necessary. That completes my statement.

Diaz:

All right Operator we can start the Q&A session. Please for media identify yourself and also the media organization you represent.

Quinn Owen, ABC News:

Hi. Good afternoon. This is Quinn with ABC. Thanks for doing this call. Could you please start by going over the breakout between the total number of individuals apprehended and the number that are determined inadmissible at the port? And then how many of each of those are family units?

Chief Brian Hastings:

Yes. Hello sir this is Brian Hastings again. I think the folks are going to send some data here a little bit later but I'll cover it real quick just in case. Apologize if I went too quick. March, again, CBP total just in March encountered 103,000 individuals, over 103,000 individuals on the Southwest border. 92,000 of those were Border Patrol apprehensions between the ports of entry.

So to go into the specific breakdowns again of those 92,000 that I just talked about with Border Patrol apprehensions, 30,000 of those were single adults, 8900 were unaccompanied children, over 53,000 were family units, primarily again from the Northern Triangle.

Acting Media Director Carlos Diaz:

Hey Quinn, this is Carlos Diaz. We'll be posting the stats and the breakdowns on our website like we normally do every month later today.

Quinn Owen, ABC News:

Great. Thank you.

Acting Media Director Carlos Diaz:

All right we're ready for the next question.

Operator:

Our next question comes from the line of Nick Miroff, the line is open. Please go ahead.

Nick Miroff, Washington Post:

Hey this is Nick Miroff for the Washington Post. Thanks for doing the call. The President says that Mexico is taking its toughest measures on immigration enforcement in years. The Mexican government says indeed it is doing more to stop migrants in the last, you know, week or so. So what are you seeing in terms of your apprehensions and general encounters along the border? You noted that you have about 10,000 people in custody. Is that a signal that these numbers have actually been declining over the past week to 10 days?

Chief Brian Hastings:

Nick, no I would say that the numbers aren't declining. In fact we're still seeing 3000 apprehensions per day for Border Patrol. We had a two-day lull but we continue to see high numbers. We do have a good working relationship with our Mexican law enforcement counterparts. We do know that they have set up additional checkpoints down south. We do expect that that will hopefully have an effect. However we have not seen any results of that so far to date.

Andy Trey, CBS:

Hi thanks for taking the question. We saw some reporting out of the White House yesterday there's a plan to once again separate children from the people they cross with. Have you guys started planning for that? Are there plans for that? And what's the latest you can tell us?

Acting Media Director Carlos Diaz:

Andy, this is Carlos. This conversation is focusing right now on the update for numbers. That will be a question that will have to be addressed outside the call.

Andy Trey, CBS:

Okay thanks.

Alicia Caldwell, Wall Street Journal:

Hey guys. Thanks for taking the question. There was talk earlier, like, last week earlier that 750 CBP Officers from ports of entry had been redeployed. You said today it's 545. Were there 750 deployed initially? Can you describe how that's working at this stage? You said it was flexible, I believe, Randy, but what's that situation now?

Executive Director Randy J. Howe:

Thanks for the question. It's Randy. So that 750 number was the number that we presented initially. Then we worked with Border Patrol, based on a specific need, the number that was landed on was 545. You know, like I said, we're able to flex up or down depending upon the crisis and how things go.

Nomaan Merchant, Associated Press:

Hi good afternoon. This is Nomaan Merchant with the Associated Press. Do you believe that renewing family separation from a law enforcement perspective would take away some of the incentive that you say is driving families to the border? Do you think family separation -- reinstating that -- would drive down these apprehension numbers in the future?

Acting Media Director Carlos Diaz:

Nomaan - Nomaan this is Carlos. This is a discussion about the number that have been updated for March. Any policy questions will have to be discussed at another forum. Next question.

Geneva Sands, CNN:

Good afternoon. This is Geneva Sands with CNN. Thank you. You had mentioned that families and people in general are being stuck or are in custody longer leading to their releases and sometimes crowded conditions. Do you have the average time that families are being held in Border Patrol custody across the Southwest border?

Chief Brian Hastings:

So ma'am this is Brian again. The time in custody is something that we do watch closely. We have seen the time in custody increase in primarily in those three sectors that we provided, RGV, El Paso and Yuma. We have, as I stated earlier, also done a number of things to assist with those over capacity numbers.

We have medical -- multiple medical -- contractors that are on the ground to provide care. We also have US Coast Guard medical teams who are on site in El Paso to assist with care as well. And those actual TIC numbers or what we call TIC numbers -- time in custody numbers -- are what helped predicate the need to begin releasing the processed family units, noncriminal processed family units.

Geneva Sands, CNN:

And what was the time in custody then that helped predicate the releases?

Chief Brian Hastings:

It varies from location to location.

Acting Media Director Carlos Diaz:

We could take that as a follow up Geneva.

Geneva Sands, CNN:

Thank you.

Zolan Kanno-Youngs, NY Times:

Hey thanks for making the time. It's Zolan Kanno-Youngs from the New York Times. I know this is limited to the apprehension numbers and that's the topic, but in terms of these numbers, I mean, we are seeing them increase. Now I'm curious what you think needs to happen from a policy perspective to actually bring them down? And specifically if you support binary choice when it comes to the apprehension numbers that we're seeing increase.

Chief Brian Hastings:

So this is Brian again. Specifically I mean, what we look at the biggest problem being for us appears to be TVPRA and Flores and then just going through the system quicker in a more - adjudicating the cases quicker, if you will. We need some assistance with CIS and additional attorneys in order to expedite these cases and the credible fear claims quicker.

Zolan Kanno-Youngs, NY Times:

So do you think binary choice would then help with this issue?

Acting Media Director Carlos Diaz:

Hey, Zolan, same thing, this is the update about the numbers. That's a discussion that we'll have to have in another forum.

Zolan Kanno-Youngs, NY Times:

Well I'm asking if it's, you know, if they think that it would be a factor in diminishing, you know, this increase.

Acting Media Director Carlos Diaz:

We have the operators here in the room, they don't make policy.

Zolan Kanno-Youngs, NY Times:

Okay. Thank you.

Farida Jhabvala, KQED:

Yes, hi. Thank you for having this call. This is Farida Jhabvala with KQED public radio in San Francisco. I feel like in a recent call with CBP about statistics it was also showing an overwhelming increase in unaccompanied minors and family units crossing the border.

CBP counted as part of the, you know, potential solutions aid to Central America to foster, you know, employment and improved conditions there so people wouldn't, you know, feel like they need to leave. And I'm wondering what's your thought on how President Trump's, you know, recent decision to aid cut to – cut aid to Central America will impact these numbers if it's going to effect at all?

Acting Media Director Carlos Diaz:

Farida, this is Carlos Diaz. That is a policy question that will probably be better lodged to either US State Department or USAID.

Farida Jhabvala, KQED:

Okay thanks.

Julia Ainsley, NBC:

Hey. I think you mean Julia Ainsley so I'm going to talk. My line's open. Okay so that's me. I'm with NBC. Thanks for doing this. And this is a data question so I hope you can answer it. When the President talked a lot about fraudulent family units. We've asked again and again for data on how many of these families are people who claim they are part of a family and are not. Do you have that? Are those numbers you could share with us today? I know this question is getting redundant but we just haven't gotten the answer.

Chief Brian Hastings:

This is Brian again. I do have the data. I'm digging for the data real quick. If you can give me just a minute I'll try and get the data to you here momentarily.

Julia Ainsley, NBC:

Thank you.

Acting Media Director Carlos Diaz:

Hey Julia, just to keep this moving we can follow up with a response to you. Would that work?

Julia Ainsley, NBC:

Yes, please do. And if you get it while we're on the call maybe we'd all like to hear it too.

Acting Media Director Carlos Diaz:

Absolutely. We'll do that. So we'll move to the next question while we search over here.

Oriana Zill de Granados, CBS News:

Hi. Yes I'm on with Emily. This is Oriana Zill from CBS News. My question is a two-parter. The first question is you mention that in the month of March you had to release 11,000 processed noncriminal family units. I'm curious exactly what the processing is before release on those?

And then my second question is, the 8900 children who were unaccompanied minors, is there any record of how many of those were part of a family unit but were separated because the adults were deemed - had to be prosecuted or were not the family or for other reasons?

Chief Brian Hastings:

So this is Brian again. I'll answer your first question first. And we're - again we're digging for the numbers in relation to the fraudulent family so I'll be able to give you some data shortly. But what I would say is so the family units are still processed as they normally would be. Ran through our ENFORCE and IDENT system, biometrics taken, run the same checks as far as immigration and criminal checks on the individuals that are served with a notice to appear. They're provided with the address sheet of where they need to report for court. Once they arrive at the location where they're traveling to a full sheet of immigration - or locations is provided to them and they're provided with an order of recognizance which means essentially they are released and that's their travel documentation. It's the same thing that ERO has been doing. ERO has been doing the same thing in a lot of cases because they simply do not have capacity for the family units.

Oriana Zill de Granados, CBS News:

Thank you.

Chief Brian Hastings:

The only thing I would add that I forgot to add is in all those cases we are doing medical screening on individuals on the Southwest border as well. So those family units prior to being released one of the first things that happens once they're in our custody at our facilities is the medical screening. And I'll have data hopefully very soon on the families - the fraudulent family question.

Nina Storchlic, National Geographic:

Hi. Thank you. This is Nina Storchlic with National Geographic. I'm hoping someone can talk about the number of Guatemalans represented in the apprehension statistics so far this year and how that compares to other nationalities from the Northern Triangle.

Chief Brian Hastings:

So the Guatemalan – the large groups that we've seen have been primarily consisting of Guatemalans. I don't have the exact data breaking down Guatemala, Hondurans and El Salvador with me but I believe you'll receive that data - actually I do. One moment. About 37% of all our Southwest border apprehensions are from Guatemala.

Nina Storchlic, National Geographic:

Is that the majority in terms of the other nationalities represented?

Acting Media Director Carlos Diaz:

We'll have a breakdown for the Northern Triangle on our website once we post the data.

Nina Storchlic, National Geographic:

Okay thank you.

Charlotte Cuthbertson:

Thank you for doing the call. I'm just wondering if you have any data on the people who evaded apprehension from Border Patrol, any numbers there?

Acting Media Director Carlos Diaz:

Can you clarify your question ma'am?

Charlotte Cuthbertson:

Sure. Do you have any numbers on how many people cross illegally and evaded capture by Border Patrol?

Executive Director Randy J. Howe:

Ma'am so what I would say is the focus has been primarily, as I said, on processing the large volume and capacity that we're seeing right now. And with that that has a large pull from us - from what we have as far as agents on the border to provide that primary mission of national security.

Our numbers are showing our effectiveness interdiction rates are showing high right now. But I would say that a lot of our agents are pulled away from that primary mission of national security while they're performing humanitarian mission during this crisis.

Acting Media Director Carlos Diaz:

All right so let me do a quick check and see if we have the data on the on the fraudulent families...

Chief Brian Hastings:

So for the fraudulent families the last updated data that I have from April of 2018 through March 25 of 2019 Border Patrol has identified over 3100 individuals undergoing processing as family units that had made fraudulent claims. This includes - it's important for me to note that this includes both individuals who claim to be children with the parent and were determined to be 18 or older -- not less than 18 -- or those individuals who had - did not have a true family relationship.

Acting Media Director Carlos Diaz:

All right folks, this - we're going to conclude the call for now. Remember if you have any follow ups, please contact us at CBP Media Relations at CBP.gov.

U.S. Customs and Border Protection is the unified border agency within the Department of Homeland Security charged with the management, control and protection of our nation's borders at and between official ports of entry. CBP is charged with securing the borders of the United States while enforcing hundreds of laws and facilitating lawful trade and travel.

Last modified: April 10, 2019

Tags: Border Security



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EXHIBIT 7



FACT SHEETS

President Donald J. Trump's Border Security Victory

NATIONAL SECURITY & DEFENSE

Issued on: February 15, 2019



“

I will never waver from my sacred duty to defend this Nation and its people. We will get the job done.

President Donald J. Trump

SECURING OUR BORDER: President Donald J. Trump is following through on his promise to secure the border with legislation and Executive action.

- President Trump was elected partly on his promise to secure the Southern Border with a barrier and, since his first day in office, he has been following through on that promise.
- As the President has said, sections of the border wall are already being built, and legislation and Executive actions are building on that progress.
- Executive action being taken by the President makes available additional funding to secure our border that is essential to our national security.

LEGISLATIVE WINS: President Trump secured a number of significant legislative victories in the Homeland Security appropriations bill that further his effort to secure the Southern Border and protect our country.

- The funding bill contains robust resources and additional provisions to secure the border and strengthen immigration enforcement.
- The bill provides \$1.375 billion for approximately 55 miles of border barrier in highly dangerous and drug smuggling areas in the Rio Grande Valley, where it is desperately needed.
 - More than 40 percent of all border apprehensions occurred in the Rio Grande Valley sector in fiscal year (FY) 2018.
 - The Rio Grande Valley was the border sector with the most known deaths of illegal border crossers in FY 2018.
- \$415 million will go toward addressing the humanitarian crisis at the border by providing medical care, transportation, processing centers, and consumables.
- President Trump successfully rejected efforts by some to undercut Immigration and Customs Enforcement's (ICE) ability to uphold our laws and detain illegal aliens, including criminals.
 - ICE funding supports nearly 5,000 additional beds to detain illegal aliens and keep criminals off our streets.
- Customs and Border Protection will receive funding for 600 additional officers.
- This bill will help keep deadly drugs out of our communities by increasing drug detection at ports of entry, including opioid detection staffing, labs, and equipment.

A PROMISE TO ACT: President Trump is taking Executive action to ensure we stop the national security and humanitarian crisis at our Southern Border.

- President Trump is using his legal authority to take Executive action to secure additional resources, just as he promised. In part, he is declaring a national emergency that makes available additional troops and funding for military construction.
- Including funding in Homeland Security appropriations, the Administration has so far identified up to \$8.1 billion that will be available to build the border wall once a national emergency is declared and additional funds have been reprogrammed, including:
 - About \$601 million from the Treasury Forfeiture Fund
 - Up to \$2.5 billion under the Department of Defense funds transferred for Support for Counterdrug Activities (Title 10 United States Code, section 284)
 - Up to \$3.6 billion reallocated from Department of Defense military construction projects under the President's declaration of a national emergency (Title 10 United States Code, section 2808)
- These funding sources will be used sequentially and as needed.
- The Department of Homeland Security, Department of Defense, and the Army Corps of Engineers are working to create a prioritized list of segments and a work plan for the remainder of FY 2019 and beyond.
 - New projects could include: new levee wall, new and replacement primary pedestrian barrier, new vehicle-to-pedestrian barrier, and new secondary barrier.

NATIONAL EMERGENCY ON OUR BORDER: The President is using his clear authority to declare a national emergency as allowed under the National Emergencies Act.

- Since 1976, presidents have declared nearly 60 national emergencies.
 - Most of the previously declared national emergencies have been continually renewed and are still in effect, after being continually renewed.
- Multiple Governors have declared states of emergency along the border in the past.

- Former Arizona Governor Janet Napolitano, who became President Obama's DHS Secretary, declared a state of emergency along the border in 2005.
- Former New Mexico Governor Bill Richardson also declared a state of emergency at the border in 2005.
- Former President George W. Bush and former President Obama both directed the use of the military to assist DHS in securing and managing the Southern Border.
- Former President Bush declared a national emergency in 2001, which invoked reprogramming authority granted by Title 10 United States Code, section 2808, and both he and former President Obama used that authority a total of 18 times to fund projects between 2001 and 2014.

ADDRESSING THE CRISIS AT HAND: President Trump is taking the necessary steps to address the crisis at our Southern Border and stop crime and drugs from flooding into our Nation.

- Cartels, traffickers, and gangs, like the vile MS-13 gang, have taken advantage of our weak borders for their own gain.
- Immigration officers have made 266,000 arrests of criminal aliens in the last two fiscal years.
 - This includes aliens charged or convicted of approximately 100,000 assaults, 30,000 sex crimes, and 4,000 killings.
- Tons of deadly drugs have flooded across the border and into our communities, taking countless American lives.
 - Methamphetamine, heroin, cocaine, and fentanyl all flow across our Southern Border and destroy our communities.
 - More than 70,000 Americans died of drug overdoses in 2017 alone.
- Human traffickers exploit our borders to traffic young girls and women into our country and sell them into prostitution and slavery.

- Massive caravans of migrants view our unsecure border as a way to gain illegal entry into our country and take advantage of our nonsensical immigration loopholes.

EXHIBIT 8

DECLARATION OF KENNETH P. RAPUANO

I, KENNETH P. RAPUANO, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Assistant Secretary of Defense for Homeland Defense and Global Security (ASD(HD&GS)). Among other duties, which are generally reflected in Department of Defense (DoD) Directive 5111.13, I am responsible for developing, coordinating, and overseeing implementation of DoD policy for plans and activities related to defense support of civil authorities. On April 5, 2018, the Secretary of Defense designated the ASD(HD&GS) to manage the then-newly established DoD Border Security Support Cell. The DoD Border Security Support Cell is the focal point and integrator for all requests for assistance, taskings, and information related to DoD support pursuant to the President's April 4, 2018, memo, "Securing the Southern Border of the United States."

2. This declaration is based on my own personal knowledge and information made available to me in the course of my official duties.

10 U.S.C. § 284

3. On February 25, 2019, the Department of Homeland Security (DHS) submitted a request to DoD for assistance in blocking up to 11 specific drug-smuggling corridors along certain portions of the southern border of the United States, pursuant to 10 U.S.C. § 284. The request sought assistance through the replacement of existing vehicle barricades or dilapidated pedestrian fencing with new pedestrian fencing, the construction of new patrol roads and the improvement of existing patrol roads, and the installation of lighting on Federal land. *See Exhibit A.*

4. On March 25, 2019, the Acting Secretary of Defense approved three projects to block drug-smuggling corridors based on this February 25, 2019, DHS request. *See Exhibit B.* Two projects are located in Arizona, and one project is located in New Mexico. The approved projects were identified as: Yuma Sector Project 1 (maximum of 5 miles/18-foot fence); Yuma Sector Project 2 (maximum of 6 miles/18-foot fence); and El Paso Sector Project 1 (maximum of 46 miles/18-foot fence).

5. Also on March 25, 2019, the Acting Secretary of Defense decided to use DoD's general transfer authority under section 8005 of the Department of Defense Appropriations Act, 2019, and section 1001 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 to transfer funds between DoD appropriations to fund the approved projects. Specifically, he determined that the above projects he approved for DHS will be funded through a transfer of \$1 billion to the counter-narcotics support line of the Drug Interdiction and Counter-Drug Activities, Defense, account from fiscal year 2019 Army military personnel accounts that were excess to current military personnel requirements. *See Exhibit C.* Army personnel funds were available for transfer because expenditures for service member pay and compensation, retirement benefits, food, and moving expenses through the end of fiscal year 2019 will be lower than originally budgeted. Congress was notified of this transfer on March 25, 2019. *See Exhibit D.*

6. On March 26, 2019, the designated \$1 billion was transferred from the Drug Interdiction and Counter-Drug Activities, Defense, account to the Operation and Maintenance, Army, account for use by the U.S. Army Corps of Engineers to undertake fence and road construction and lighting installation for the approved projects. Of the \$1 billion, \$2.5 million is for U.S. Army Corps of Engineers planning and surveys of the areas where border barriers will be constructed under section 284.

7. On March 29, 2019, DHS requested that DoD modify certain technical specifications for the three projects approved on March 25, 2019. Specifically, DHS requested that all fencing constructed by DoD include a 5-foot anti-climb steel plate and that DoD construct 30-foot fencing for Yuma Sector Project 1 and El Paso Sector Project 1. The fence for Yuma Sector Project 2 will remain 18 feet. *See* Exhibit E. The Acting Secretary of Defense approved this modification on April 9, 2019. *See* Exhibit F.

8. On April 9, 2019, DoD announced that the U.S. Army Corps of Engineers had awarded contracts to SLSCO Ltd. of Galveston, Texas (\$789 million) to perform work in support of El Paso Sector Project 1, and to Barnard Construction Co. Inc. of Bozeman, Montana (\$187 million), to perform work to support the Yuma Sector projects.

9. On April 12, 2019, DHS determined that it has sufficient appropriated funding to address approximately four (4) of the six (6) miles identified for Yuma Project 2. Based on the availability of this appropriated funding, DHS modified its request by removing 4 miles from the Yuma Project 2 requirements for DoD. *See* Exhibit G. On April 18, 2019, I approved this modification, which permitted funding additional miles of 30-foot bollard fencing, roads, and lighting in the El Paso Sector 1 project. *See* Exhibit H.

10. The U.S. Army Corps of Engineers currently plans that construction of the approved section 284 projects will begin no earlier than May 25, 2019.

11. As part of the DoD Comptroller's review of available funding, additional funds may be identified that are excess to need or are otherwise appropriate to use for additional section 284 projects. In that case, DoD could approve the transfer of up to an additional \$1.5 billion to the counter-narcotics support line of the Drug Interdiction and Counter-Drug Activities, Defense, account. Decisions by the Acting Secretary of Defense regarding future transfer of funds and approval of additional DHS-requested projects under § 284 are expected in May 2019.

12. DoD will not use any DoD counter-narcotics funding for the drug-demand-reduction program, the National Guard counter-drug program, or the National Guard counter-drug schools program to provide support to DHS under 10 U.S.C. § 284(b)(7).

10 U.S.C. § 2808

13. On February 15, 2019, the President of the United States, in accordance with the National Emergencies Act, 50 U.S.C. §§ 1601-1651, declared that a national emergency exists at the southern border of the United States. In accordance with that declaration, the President invoked

10 U.S.C. § 12302 and made that statutory authority available, according to its terms, to the Secretaries of the military departments concerned, subject to the direction of the Secretary of Defense in the case of the Secretaries of the Army, Navy, and Air Force. To provide additional authority to DoD in support of the Federal Government's response to the national emergency at the southern border, the President also declared that this emergency requires use of the armed forces and, in accordance with section 301 of the National Emergencies Act (50 U.S.C. § 1631), that the construction authority provided in 10 U.S.C. § 2808 is made available, according to its terms, to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments.

14. Under section 2808, whenever the President declares a national emergency "that requires use of the armed forces," the Secretary of Defense may undertake or authorize military construction projects "not otherwise authorized by law that are necessary to support such use of the armed forces" 10 U.S.C. § 2808(a). The Acting Secretary of Defense has not yet decided to undertake or authorize any barrier construction projects under section 2808. To inform the Acting Secretary's decision, on March 20, 2019, the Secretary of Homeland Security provided a prioritized list of proposed border-barrier-construction projects that DHS assesses would improve the efficiency and effectiveness of the armed forces supporting DHS in securing the southern border. On April 11, 2019, as a follow-up to the Chairman's preliminary assessment of February 10, 2019, the Acting Secretary instructed the Chairman of the Joint Chiefs of Staff to provide, by May 10, 2019, a detailed assessment of whether and how specific military construction projects could support the use of the armed forces in addressing the national emergency at the southern border.

15. Also on April 11, 2019, the Acting Secretary instructed the DoD Comptroller, in consultation with the Secretaries of the military departments, the Chairman of the Joint Chiefs of Staff, the Under Secretary of Defense for Acquisition and Sustainment, the Under Secretary of Defense for Policy, and the heads of any other relevant DoD components to identify, by May 10, 2019, existing military construction projects of sufficient value to provide up to \$3.6 billion of funding for his consideration. When evaluating the potential funding sources for potential section 2808 construction projects, the Comptroller was instructed not to consider family housing, barracks, or dormitory projects; projects that have already been awarded; or projects that have fiscal year 2019 award dates.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 25, 2019


KENNETH P. RAPUANO

EXHIBIT A

Executive Secretary


U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

February 25, 2019

MEMORANDUM FOR: CAPT Hallock N. Mohler Jr.
Executive Secretary
Department of Defense (DoD)

FROM: Christina Bobb 
Executive Secretary
Department of Homeland Security (DHS)

SUBJECT: Request for Assistance Pursuant to 10 U.S.C. § 284

I. Overview

As the government department tasked with border security, the Department of Homeland Security (DHS), through U.S. Customs and Border Protection (CBP), is requesting that the Department of Defense assist DHS in its efforts to secure the southern border. The Secretary has directed me to transmit this request for assistance to your attention. This memorandum supersedes the February 22, 2019 version.

In Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (IIRIRA), 8 U.S.C. § 1103 note, Congress has directed DHS to construct border infrastructure in areas of high illegal entry to deter illegal crossing of both drugs and people into the United States. Pursuant to Section 102, DHS has identified the areas set forth in Section II below as areas of high illegal entry where CBP must take action (the Project Areas).

Within the Project Areas, DHS is experiencing large numbers of individuals and narcotics being smuggled into the country illegally. The Project Areas are also used by individuals, groups, and transnational criminal organizations as drug smuggling corridors. Mexican Cartels continue to remain dominant in these areas, influencing and controlling narcotics and human smuggling operations, within their respective strongholds.

DHS must use its authority under Section 102 of IIRIRA to install additional physical barriers and roads in the vicinity of the United States border in order to deter and prevent illegal crossings within the Project Areas. The construction of border infrastructure within the Project Areas will support DHS's ability to impede and deny illegal entry and drug smuggling activities within the Project Areas.

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

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The Project Areas identified are adjacent to some of the most densely populated metropolitan areas of Mexico and are also home to some of the strongest and most violent drug cartels in the world. Deterring and preventing illegal cross-border activity will help stem the flow of illegal narcotics and entries in these areas. Similarly, the improved ability to impede, deny, and be mobile within the Project Areas creates a safer operational environment for law enforcement.

To support DHS's action under Section 102 of IIRIRA, DHS is requesting that DoD, pursuant to its authority under 10 U.S.C. § 284(b)(7), assist with the construction of fences roads, and lighting within the Project Areas to block drug-smuggling corridors across the international boundary between the United States and Mexico.

II. Capabilities Requested

Within the Project Areas there is existing vehicle fence and dilapidated pedestrian fencing. Vehicle fencing is intended to stop vehicles from illegally entering the United States, but can be climbed over or under by individuals. Pedestrian fencing is intended to prevent and deter individuals and vehicles from illegally crossing into the United States.

DHS requests that DoD assist in the execution of projects, within the Project Areas set forth below, to: (1) replace existing vehicle barriers or dilapidated pedestrian fencing with new pedestrian fencing; (2) construct roads; and (3) install lighting.

The new pedestrian fencing includes a Linear Ground Detection System, which is intended to, among other functions, alert Border Patrol agents when individuals attempt to damage, destroy or otherwise harm the barrier. The road construction includes the construction of new roads and the improvement of existing roads. The lighting that is requested has an imbedded camera that works in conjunction with the pedestrian fence. The lighting must be supported by grid power.

The segments of fence within the Project Areas identified below are situated on federal property. DHS will be responsible for securing, to the extent required, any other real estate interest or instrument that is required for project execution. In the event a real estate interest or instrument that is needed for project execution cannot be obtained for a segment of fence within a Project Area in a time frame that is within the requirements of this request for assistance, the segment may be withdrawn from this request. In addition, DHS will be responsible for any applicable environmental planning and compliance to include stakeholder outreach and consultation associated with the projects.

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

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Project Areas:

II.A. El Centro Sector

Within the United States Border Patrol El Centro Sector (El Centro Sector) DHS is requesting that DoD assist by undertaking road construction, by replacing approximately 15 miles of existing vehicle barrier with new pedestrian fencing, and by installing lighting in the specific locations identified below.

The specific Project Area identified below is located in Imperial County, California and has been identified by the Office of National Drug Control Policy (ONDCP) as a High Intensity Drug Trafficking Area (HIDTA). Multiple local transnational criminal organizations known for smuggling drugs into Calexico from Mexico using a variety of tactics, techniques, procedures, and varying concealment methods operate in this area, including *Cartel De Jalisco Nueva Generación* (CJNG) as well as remnants of the *Beltran Leyva* Organization and *La Familia Michoacana* organizations. CJNG, based in Jalisco, was previously a faction of the *Sinaloa* Cartel. CJNG broke away from the *Sinaloa* Cartel and has become an established Mexican Cartel. The Mexican government has declared CJNG as one of the most dangerous cartels in the country.

Due to the close proximity of urban areas on both sides of the border, the El Centro Sector suffers from some of the quickest vanishing times – that is, the time it takes to illegally cross into the United States and assimilate into local, legitimate traffic. These quick vanishing times enable the illegal activities of transnational criminal organizations, whether they are smuggling people or narcotics.

Border Patrol's own experience with apprehensions between border crossings bears this out. In fiscal year 2018, there were over 29,000 apprehensions of illegal entrants attempting to enter the United States between border crossings in the El Centro Sector. Also in fiscal year 2018, Border Patrol had approximately 200 separate drug-related events between border crossings in the El Centro Sector, through which it seized over 620 pounds of marijuana, over 165 pounds of cocaine, over 56 pounds of heroin, and over 1,600 pounds of methamphetamine.

The specific Project Area is as follows:

- *El Centro Project 1:*
 - The project begins approximately 10 miles west of the Calexico Port of Entry continuing west 15.25 miles in Imperial County.
 - Start coordinate: 32.63273, -115.922787; End coordinate: 32.652563, -115.662399

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

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II.B. Yuma Sector

Within the United States Border Patrol Yuma Sector (Yuma Sector) DHS is requesting that DoD assist by undertaking road construction, by replacing approximately 36 miles of existing vehicle barrier and approximately 6 miles of dilapidated pedestrian fencing with new pedestrian fencing, and by installing lighting in the specific locations identified below. The specific areas identified below are located in Yuma County, Arizona.

Yuma County has been identified by the ONDCP as a HIDTA. Of particular note is the operation of the *Sinaloa* Cartel in this area. The *Sinaloa* Cartel continues to be the most powerful cartel in the country and controls illicit networks and operations in the United States. Despite the arrest of Joaquin "El Chapo" Guzman-Loera, its narcotics business has continued uninterrupted. As a result, there have been no significant changes within the *Sinaloa* Cartel's hierarchy, or any changes in the illicit operations conducted by the *Sinaloa* Cartel.

Border Patrol's own experience with apprehensions between border crossings bears this out. In fiscal year 2018, there were over 26,000 apprehensions of illegal entrants attempting to enter the United States between border crossings in the Yuma Sector. Also during fiscal year 2018, Border Patrol had over 1,400 separate drug-related events between border crossings in the Yuma Sector, through which it seized over 8,000 pounds of marijuana, over 78 pounds of cocaine, over 102 pounds of heroin, over 1,700 pounds of methamphetamine, and over 6 pounds of fentanyl.

The replacement of ineffective pedestrian fencing in this area is necessary because the older, wire mesh design is easily breached and has been damaged to the extent that it is ineffective. Additionally, this area is notorious for border violence and narcotics smuggling. Furthermore, while the deployment of vehicle barrier in the Yuma Sector initially curtailed the volume of illegal cross-border vehicular traffic, transnational criminal organizations quickly adapted their tactics switching to foot traffic, cutting the barrier, or simply driving over it to smuggle their illicit cargo into the United States. Thus, in order to respond to these changes in tactics, DHS now requires pedestrian fencing.

The specific Project Areas are as follows:

- *Yuma Project 1:*
 - The project begins approximately 1 mile southeast of the Andrade Port of Entry continuing along the Colorado River for approximately 5 miles in Yuma County.
 - Start coordinate: 32.704197, -114.726013; End coordinate: 32.642102, -114.764632)

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

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- *Yuma Project 2:*
 - The project involves the replacement of two segments of primary pedestrian fencing in Yuma Sector for a total of approximately 6 miles. This includes approximately 2 miles of fencing along the Colorado River.
 - Start coordinate: 32.37755528, -114.4268201; End coordinate: 32.3579244, -114.3623999;
 - The project also includes replacement of primary pedestrian fencing approximately 17 miles east of the San Luis Port of Entry, on the Barry M Goldwater Range, continuing east for approximately 4 miles.
 - Start coordinate: 32.51419938, -114.8011175; End coordinate: 32.49350559, -114.8116619

- *Yuma Project 3:*
 - The project begins approximately 0.4 miles east of the Barry M. Goldwater Range continuing approximately 31 miles east through the Cabeza Prieta National Wildlife Refuge in Yuma County.
 - Start coordinate: 32.232935, -113.955211; End coordinate: 32.039033, -113.33411

III.C. Tucson Sector

Within the United States Border Patrol Tucson Sector (Tucson Sector) DHS is requesting that DoD assist by undertaking road construction, by replacing approximately 86 miles of existing vehicle barrier with new pedestrian fencing, and by installing lighting in the specific locations identified below. The specific areas identified below are located in Pima, Cochise, and Santa Cruz Counties, Arizona.

Pima, Cochise and Santa Cruz Counties have been identified by the ONDCP as a HIDTA. The *Sinaloa* Cartel relies on their local associates to coordinate, direct, and support the smuggling of illegal drugs and aliens from Mexico to the United States. Since Arizona is contiguous with the U.S.-Mexico International Boundary, the Tucson and Phoenix metropolitan areas are major trans-shipment and distribution points for contraband smuggling. Plaza bosses operate as a *Sinaloa* Cartel leader within their specific area of operation along the Sonora-Arizona corridor of the U.S.-Mexico International Boundary.

Border Patrol's own experience with apprehensions between border crossings bears this out. In fiscal year 2018, there were over 52,000 apprehensions of illegal entrants attempting enter the United States between the border crossings in the Tucson Sector. Also in fiscal year 2018 Border Patrol had over 1,900 separate drug-related events between border crossings in the Tucson Sector, through which it seized over 1,600 pounds of marijuana, over 52 pounds of cocaine, over 48 pounds of heroin, over 902 pounds of methamphetamine, and over 11 pounds of fentanyl.

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

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In addition, the absence of adequate pedestrian fencing, either due to the presence of vehicle barrier only or ineffective pedestrian designs, in the Tucson sector continues to be particularly problematic as it pertains to the trafficking of illegal narcotics. Rival transnational criminal organizations frequently employ “rip crews” who leverage the remote desert environment and lack of infrastructure to steal one another’s illicit cargo resulting in increased border violence.

The terrain also provides high ground to scouts seeking to protect and warn smuggling loads being passed through the area. Transnational criminal organizations have successfully utilized this advantage in furtherance of their illicit activity and for this reason the area is in need of an improved capability to impede and deny illegal crossings or people and narcotics. In addition, the area hosts a number of tourist attractions that allow illegal activity to blend into legitimate activity; avoiding detection and evading interdiction.

The specific Project Areas are as follows:

- *Tucson Project 1:*
 - The project includes replacement of two segments of vehicle barriers. The first segment begins approximately 2 miles west of the Lukeville Port of Entry continuing west approximately 30 miles.
 - Start coordinate: 32.038278, -113.331716; End coordinate: 31.890032, -112.850162
 - The second segment project begins approximately 3 miles east of the Lukeville Port of Entry and continues east approximately 8 miles in Pima County, Arizona.
 - Start coordinate: 31.8648, -112.76757; End coordinate: 31.823911, -112.634298
- *Tucson Project 2:*
 - The project includes approximately 5 miles of primary pedestrian fence replacement around the Lukeville Port of Entry extending from approximately 2 miles west of the port to approximately 3 miles east of the port.
 - Start coordinate: 31.88999921, -112.850162; End coordinate: 31.8648, -112.76757

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

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- *Tucson Project 3:*
 - The project includes three segments of vehicle barrier replacement beginning approximately 18 miles west of the Naco Port of Entry and continuing to approximately 25 miles east of the Douglas Port of Entry (or approximately 5 miles west of the Arizona/New Mexico state line) for approximately 20 miles of non-contiguous vehicle barrier replacement in Cochise County, Arizona.
 - Start coordinate: 31.333754, -110.253863; End coordinate: 31.333767, -110.250286;
 - Start coordinate: 31.334154, -110.152548; End coordinate: 31.334137, -110.147464;
 - Start coordinate: 31.333995, -109.453305; End coordinate: 31.332759, -109.129344
- *Tucson Project 4:*
 - The project begins approximately 9 miles east of the Nogales Port of Entry and continues eastward for approximately 30 miles with approximately 26 miles of non-contiguous vehicle barrier replacement in Santa Cruz and Cochise Counties, Arizona.
 - Start coordinate: 31.333578, -110.79579; End coordinate: 31.333511, -110.775333;
 - start coordinate: 31.33328, -110.70545; End coordinate: 31.333602, -110.288665)
 - Note: An additional approximately 0.3 miles of new pedestrian fence could be built between the existing segmented vehicle barrier locations to fill existing gaps if appropriate real estate interest can be verified
- *Tucson Project 5:*
 - The project includes approximately 2 miles of vehicle barrier replacement beginning approximately 4.5 miles east of the Sasabe Port of Entry continuing east in six non-continuous segments for approximately 15 miles in Pima and Santa Cruz Counties, Arizona.
 - Start Coordinate: 31.460175, -111.473171; End Coordinate: 31.459673, -111.471584;
 - Start Coordinate: 31.453091, -111.450959; End Coordinate: 31.449633, -111.440132;
 - Start Coordinate: 31.440683, -111.412054; End Coordinate: 31.437351, -111.40168;
 - Start Coordinate: 31.423471, -111.358336; End Coordinate: 31.422541, -111.355444;
 - Start Coordinate: 31.42221, -111.354379; End Coordinate: 31.421321, -111.351608;

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

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- Start Coordinate: 31.386813, -111.243966; End Coordinate: 31.385462, -111.239759)

II.D. El Paso Sector

Within the United States Border Patrol El Paso (El Paso Sector) DHS is requesting that DoD assist by undertaking road construction, by replacing approximately 70 miles of existing vehicle barrier with new pedestrian fencing, and by installing lighting in the specific locations identified below. The specific areas identified below are located in Luna, Hidalgo and Doña Ana Counties, New Mexico. Luna, Hidalgo and Doña Ana Counties have been identified by the ONDCP as a HIDTA.

There are three specific transnational criminal organizations of interest operating in the El Paso Sector - the *Sinaloa* Cartel as well as remnants of the *Juarez* Cartel and the *Beltran Leyva* Organization. In the El Paso Sector the *Sinaloa* Cartel employs a variety of tactics, techniques and procedures depending upon the terrain and environment to move drugs across the border. While the *Sinaloa* Cartel has a strong presence and control of territories at the flanks of the Sector, it does not have full control of the territory throughout the El Paso Sector. The *Juarez* Cartel, traditionally a major trafficker of marijuana and cocaine, has become an active member in opium cultivation and heroin production.

Border Patrol's own experience with apprehensions between border crossings bears this out. In fiscal year 2018, there were over 31,000 apprehensions of illegal entrants attempting to enter the United States between border crossings in the El Paso Sector. Also in fiscal year 2018, Border Patrol had over 700 separate drug-related events between border crossings in the El Paso Sector, through which it seized over 15,000 pounds of marijuana, over 342 pounds of cocaine, over 40 pounds of heroin, and over 200 pounds of methamphetamine.

Although the deployment of vehicle barrier in the El Paso Sector initially curtailed the volume of illegal cross-border vehicular traffic, transnational criminal organizations quickly adapted their tactics switching to foot traffic, cutting the barrier, or simply driving over it to smuggle their illicit cargo into the United States.

Thus, in order to respond to these changes in tactics, CBP now requires pedestrian fencing. Successfully impeding and denying illegal activities or transnational criminal organizations in this area is further complicated by the close proximity of New Mexico Highway 9 to the border. In some cases the highway is less than a half a mile, allowing illegal cross-border traffic to evade detection and apprehension and quickly vanish from the border area.

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The specific Project Areas are as follows:

- *El Paso Project 1:*
 - The project includes 46 miles of vehicle barrier replacement beginning approximately 17.5 miles west of the Columbus Port of Entry continuing east in non-contiguous segments to approximately 35 miles east of the Columbus Port of Entry within the Luna and Doña Ana Counties, New Mexico.
 - Start Coordinate: 31.7837, -107.923151; End Coordinate: 31.783689, -107.679049;
 - Start Coordinate: 31.783672, -107.573919; End Coordinate: 31.783741, -107.038154
- *El Paso Project 2:*
 - The project includes 23.51 miles of Vehicle Barrier replacement in non-contiguous segments within Hidalgo and Luna Counties, New Mexico. The first segment begin approximately 5.1 miles east of the New Mexico/Arizona Border continuing east 4.55 miles.
 - Start Coordinate: 31.332323, -108.962631; End Coordinate: 31.332292, -108.885946;
 - The second segment begins approximately 3 miles west of the Antelope Wells Port of Entry to 3 miles east of the port of entry for 6.12 miles of Vehicle Barrier replacement.
 - Start Coordinate: 31.333368, -108.582412; End Coordinate: 31.333407, -108.47926;
 - The third segment begins approximately 20 miles west of the Columbus Port of Entry extending west 12.84 miles.
 - Start Coordinate: 31.783722, -108.182442; End Coordinate: 31.783708, -107.963193;

III. Technical Specifications

As set forth above, DHS requires road construction, installation of lighting, and the replacement of existing vehicle barrier or dilapidated pedestrian fencing with new pedestrian fencing within the Project Areas. DHS will provide DoD with more precise technical specifications as contract and project planning moves forward.

Given DHS's experience and technical expertise, DHS plans to coordinate closely with DoD throughout project planning and execution, to include review and approval of design specifications, barrier alignment and location, and other aspects of project planning and execution.

Subject: Request for Assistance Pursuant to 10 U.S.C. § 284

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IV. Sequencing

The DHS request for assistance includes approximately 218 miles in which DHS requires road construction, the installation of lighting, and the replacement of existing vehicle fencing or dilapidated pedestrian fencing with new pedestrian fencing within the Project Areas. DHS requests that DoD's support under 10 U.S.C. § 284 address the requirements in order of priority as DoD resources allow. The DHS order of priority is as follows:

1. Yuma Sector Project 1
2. Yuma Sector Project 2
3. El Paso Sector Project 1
4. El Centro Sector Project 1
5. Tucson Sector Project 1
6. Tucson Sector Project 2
7. Tucson Sector Project 3
8. Tucson Sector Project 4
9. Yuma Sector Project 3
10. El Paso Sector Project 2
11. Tucson Sector Project 5

V. Funding

DHS requests that DoD provide the above-referenced border fences, roads, and lighting on a non-reimbursable basis as support to block drug smuggling corridors.

DHS will accept custody of the completed infrastructure and account for that infrastructure in its real property records.

DHS will operate and maintain the completed infrastructure.

VI. Conclusion

DHS requests DoD assistance under 10 U.S.C. § 284 to construct fences, roads, and to install lighting in order to block drug smuggling corridors in the Project Areas set forth above. The Projects Areas set forth above are also areas of high illegal entry under IIRIRA § 102(a), and the requested fences, roads, and lighting will assist in deterring illegal crossings in the Project Areas.

EXHIBIT B



**SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000**

MAR 25 2019

The Honorable Kirstjen Nielsen
Secretary of Homeland Security
Washington, DC 20528

Dear Madam Secretary:

Thank you for your February 25, 2019 request that the Department of Defense provide support to your Department's effort to secure the southern border by blocking up to 11 drug-smuggling corridors along the border through the construction of roads and fences and the installation of lighting.

10 U.S.C. § 284(b)(7) gives the Department of Defense the authority to construct roads and fences and to install lighting to block drug-smuggling corridors across international boundaries of the United States in support of counter-narcotic activities of Federal law enforcement agencies. For the following reasons, I have concluded that the support you request satisfies the statutory requirements:


- The Department of Homeland Security (DHS)/Customs and Border Protection (CBP) is a Federal law enforcement agency;
- DHS has identified each project area as a drug-smuggling corridor; and
- The work requested by DHS to block these identified drug smuggling corridors involves construction of fences (including a linear ground detection system), construction of roads, and installation of lighting (supported by grid power and including imbedded cameras).

Accordingly, at this time, I have decided to undertake Yuma Sector Projects 1 and 2 and El Paso Sector Project 1 by constructing 57 miles of 18-foot-high pedestrian fencing, constructing and improving roads, and installing lighting as described in your February 25, 2019 request.

As the proponent of the requested action, CBP will serve as the lead agency for environmental compliance and will be responsible for providing all necessary access to land. I request that DHS place the highest priority on completing these actions for the projects identified above. DHS will accept custody of the completed infrastructure, account for that infrastructure in its real property records, and operate and maintain the completed infrastructure.

The Commander, U.S. Army Corps of Engineers, is authorized to coordinate directly with DHS/CBP and immediately begin planning and executing up to \$1B in support to DHS/CBP by undertaking the projects identified above.

Additional support may be available in the future, subject to the availability of funds and other factors.



Patrick M. Shanahan
Acting

EXHIBIT C



**SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000**

MAR 25 2019

**MEMORANDUM FOR UNDER SECRETARY OF DEFENSE (COMPTROLLER)/CHIEF
FINANCIAL OFFICER**

**SUBJECT: Funding Construction in Support of the Department of Homeland Security Pursuant
to 10 U.S.C. § 284**

On February 25, 2019 the Secretary of Homeland Security requested that the DoD provide support to the Department of Homeland Security's (DHS) effort to secure the southern border by blocking up to 11 drug-smuggling corridors along the border through the construction of roads and fences and the installation of lighting. I have determined that the requirements of title 10, U.S.C., section 284, have been satisfied. Accordingly, I have approved DoD support for Yuma Sector Projects 1 and 2 and El Paso Sector Project 1 (DHS Priority Projects 1, 2, and 3) and have authorized up to \$1B in funding for the construction of 18-foot high pedestrian fencing, the construction and improvement of roads, and the installation of lighting to block drug-smuggling corridors along the southern border.

I have also decided that the Department will reprogram funds to provide the support described above. This support will be funded through a transfer of \$1B of FY 2019 Army military personnel appropriations into the "Drug Interdiction and Counter-Drug Activities, Defense" appropriation. I am advised that this amount is excess to the Army's current programmatic needs with respect to military personnel. You should undertake a reprogramming action to effectuate such transfer, as authorized by law.

The reprogramming action that I am directing satisfies the statutory requirements. I have determined that a transfer of funds and authorizations of appropriations for the construction of fences and roads and the installation of lighting to block drug-smuggling corridors is in the national interest. In an April 4, 2018 memorandum, "Securing the Southern Border of the United States," the President directed DoD to assist DHS in stopping the flow of illegal drugs into the United States. The reprogramming action is necessary to advance that goal. I have also determined that the other requirements of Section 8005 of the DoD Appropriations Act, 2019, and Section 1001 of the John S. McCain National Defense Authorization Act for FY 2019 are met as set forth below:

- The items to be funded (Yuma Sector Projects 1 and 2 and El Paso Sector Project 1) are a higher priority than the item for which funds and authority are transferred (excess Army military personnel funds) because Yuma Sector Projects 1 and 2 and El Paso Sector Project 1 are necessary in the national interest to prevent the flow of drugs into the United States and the Army military personnel funds are excess to need due to under-execution and lower-than-expected end-strength.
- Support to law enforcement under Section 284 for the construction of fences and roads and the installation of lighting to block drug-smuggling corridors is a military requirement assigned by statute. The need to provide support for Yuma Sector Projects 1

and 2 and El Paso Sector Project 1 was an unforeseen military requirement not known at the time of the FY 2019 budget request.

- Support under Section 284 for construction of roads and fences and the installation of lighting, including for Yuma Sector Projects 1 and 2 and El Paso Sector Project 1, has not been denied by Congress.

The funds that will be used for this project are excess to the need for which they were appropriated, and therefore, the use of such funds will not have a negative impact on joint force readiness. As such, I have determined that providing the requested support for Yuma Sector Projects 1 and 2 and El Paso Sector Project 1 will not adversely affect the military preparedness of the United States.

This \$1B in funds will be allocated to the Department of the Army with instructions to allocate it further to the U.S. Army Corps of Engineers to undertake fence and road construction and lighting installation for the approved project.

No funds may be transferred or re-programmed from the drug-demand-reduction program, the National Guard counter-drug program, or the National Guard counter-drug schools program in order to fund subsection 284(b)(7) support to DHS.

You will comply with all statutory requirements, but will do so without regard to comity-based DoD policies that prescribe prior approval from congressional committees.

My point of contact is Kenneth Rapuano, Assistant Secretary of Defense for Homeland Defense and Global Security.



Patrick M. Shanahan
Acting

cc:

Secretary of the Army
Chairman of the Joint Chiefs of Staff
Under Secretary of Defense for Policy
General Counsel of the Department of Defense
Assistant Secretary of Defense for Legislative Affairs
Assistant to the Secretary of Defense for Public Affairs
Commander, U.S. Army Corps of Engineers

EXHIBIT D



OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

COMPTROLLER
(Program/Budget)

MAR 25 2019

Mr. Mark Sandy
Deputy Associate Director,
National Security Division
Office of Management and Budget
Washington, DC 20503

Dear Mr. Sandy:

Enclosed is a Reprogramming Action for the Department's Support for the Department of Homeland Security (DHS) Counter-Drug Activity.

Pursuant to section 8005 of division A of Public Law 115-245, the Department of Defense (DoD) Appropriations Act, 2019; and section 1001 of Public Law 115-232, the John S. McCain National Defense Authorization Act for Fiscal Year (FY) 2019; as delegated, the Deputy Under Secretary of Defense (Comptroller) has determined that it is in the national interest to effect a transfer of funds between appropriations of the Department of Defense, as depicted on the enclosed reprogramming action.

Upon your approval, the reprogramming action will be forwarded to the congressional committees.

Sincerely,

Anne J. McAndrew
DoD Deputy Comptroller (Program/Budget)

Enclosure:
As stated

Under the authority vested in the Office of Management and Budget by section 8005 of division A of Public Law 115-245, the DoD Appropriations Act, 2019, the transfers in the enclosed reprogramming action for Support for the DHS Counter-Drug Activity are approved and can be transmitted to the congressional committees.

OMB Approval: _____

Date: 3/25/2019



Unclassified

REPROGRAMMING ACTION

Page 1 of 3

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-01 RA			
Appropriation Title: Various Appropriations						Includes Transfer? Yes			
Component Serial Number:		(Amounts in Thousands of Dollars)							
		Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item		Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a		b	c	d	e	f	g	h	i

This reprogramming action is submitted because this action uses general transfer authority. This reprogramming action provides funding in support of higher priority items, based on unforeseen military requirements, than those for which originally appropriated; and is determined to be necessary in the national interest. It meets all administrative and legal requirements, and none of the items has previously been denied by the Congress.

This reprogramming action transfers \$1,000.000 million from the Military Personnel, Army, 19/19, and Reserve Personnel, Army, 19/19, appropriations to the Drug Interdiction and Counter-Drug Activities, Defense, 19/19, appropriation. This reprogramming action uses \$1,000.000 million of general transfer authority pursuant to section 8005 of division A of Public Law 115-245, the Department of Defense (DoD) Appropriations Act, 2019; and section 1001 of Public Law 115-232, the John S. McCain National Defense Authorization Act for Fiscal Year (FY) 2019.

FY 2019 REPROGRAMMING INCREASE:**+1,000,000****Drug Interdiction and Counter-Drug Activities, Defense, 19/19****+1,000,000****Budget Activity 01: Counter-Narcotics Support**

238,306

238,306

+1,000,000

1,238,306

Explanation: Funds are required to provide support for counter-drug activities of the Department of Homeland Security (DHS). DHS has identified areas along the southern border of the United States that are being used by individuals, groups, and transnational criminal organizations as drug smuggling corridors, and determined that the construction of additional physical barriers and roads in the vicinity of the United States border is necessary in order to impede and deny drug smuggling activities. DHS requests DoD assistance in the execution of projects to replace existing vehicle barriers or dilapidated pedestrian fencing with new pedestrian fencing, construct roads, and install lighting. Title 10, U.S.Code, Section 284(b)(7) authorizes the DoD to support counterdrug activities of other Federal agencies through the construction of roads and fences, and the installation of lighting, to block drug smuggling corridors across international boundaries of the United States. Such support is funded using DoD's Drug Interdiction and Counter-Drug Activities appropriation. This is a base budget requirement.

Approved (Signature and Date)

Elaine McCusker

3/25/19

Unclassified**REPROGRAMMING ACTION**

Page 2 of 3

Subject: Support for DHS Counter-Drug Activity Reprogramming Action							DoD Serial Number: FY 19-01 RA	
Appropriation Title: Various Appropriations							Includes Transfer? Yes	
Component Serial Number:	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

FY 2019 REPROGRAMMING DECREASES:**-1,000,000****Military Personnel, Army, 19/19****-993,627****Budget Activity 01: Pay and Allowances of Officers**

14,000,263

14,000,263

-56,440

13,943,823

Explanation: Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-38.9 million) and Continuation Pay (CP) (\$-17.5 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system. This is base budget funding.

Budget Activity 02: Pay and Allowances of Enlisted

27,151,209

27,151,209

-754,212

26,396,997

Explanation: Funds are available due to a 9,500 Soldier reduction to Army's overall end strength target (478,000 vice 487,500) as Army refocuses on smart, modest annual growth without compromising quality in a highly challenging recruiting and retention market. Funds are available from the following programs stemming from strength reductions and rate-driven adjustments observed in execution to date. This is base budget funding.

- \$325.9 million in basic pay, primarily driven by the decrease in projected average strength
- \$135.1 million in retired pay accrual, primarily driven by the decrease in projected average strength
- \$15.9 million in clothing allowances, stemming from reduced requirements for non-accession related uniform purchases
- \$13.3 million in incentive pays and family separation allowances, reflecting current base budget execution trends showing a shift toward higher Overseas Contingency Operations execution
- \$141.3 million in separation payments, driven by nearly 10 thousand fewer projected separations than seen in fiscal year 2018, fewer Soldiers eligible for disability separation in the Integrated Disability Evaluation System, and fewer projected involuntary separations
- \$29.0 million in social security tax employer contributions, primarily driven by the decrease in projected average strength
- \$27.6 million in enlistment and reenlistment incentives, due to projections for fewer recruitment contracts with bonus options compared to prior year execution and a smaller than expected cohort eligible for reenlistment
- \$66.1 million due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions (\$-41.4 million) and Continuation Pay (CP) (\$-24.7 million) for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system

Unclassified**REPROGRAMMING ACTION**

Page 3 of 3

Subject: Support for DHS Counter-Drug Activity Reprogramming Action						DoD Serial Number: FY 19-01 RA	
Appropriation Title: Various Appropriations						Includes Transfer? Yes	
Component Serial Number:	(Amounts in Thousands of Dollars)						
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity Amount
a	b	c	d	e	f	g	h i
<u>Budget Activity 04: Subsistence of Enlisted Personnel</u>							
		2,269,930		2,269,930		-57,420	2,212,510
<u>Explanation:</u> Funds are available due to a decrease in projected average enlisted strength, lower than budgeted rate increases (no inflation in 2019 vice 3.4% budgeted), and a slight increase in the amount of realized collections for members subsisting in Army dining facilities. This is base budget funding.							
<u>Budget Activity 05: Permanent Change of Station Travel</u>							
		1,785,401		1,785,401		-115,726	1,669,675
<u>Explanation:</u> Funds are available due to lower than budgeted rates of execution that have been realized in recent move expenditures. This is base budget funding. Specifically:							
<ul style="list-style-type: none"> • \$36.9 million is available in accession moves • \$26.1 million is available in rotational moves • \$52.7 million is available in separation moves 							
<u>Budget Activity 06: Other Military Personnel Costs</u>							
		317,883		317,883		-9,829	308,054
<u>Explanation:</u> Funds are available due to a lower-than-projected number of former soldiers receiving unemployment compensation payments. This is base budget funding.							
<u>Reserve Personnel, Army, 19/19</u>						<u>-6,373</u>	
<u>Budget Activity 01: Reserve Component Training and Support</u>							
		4,874,662		4,871,312		-6,373	4,864,939
<u>Explanation:</u> Funds are available due to lower than expected Thrift Savings Plan (TSP) automatic and matching contributions for military members enrolled in the new Blended Retirement System (BRS) as a result of fewer than planned opt-ins from the legacy retirement system. This is base budget funding.							

Unclassified REPROGRAMMING ACTION - INTERNAL REPROGRAMMING

Page 1 of 1

Subject: Drug Interdiction and Counter-Drug Activities, Defense						DoD Serial Number: FY 19-11 IR			
Appropriation Title: Various Appropriations						Includes Transfer? Yes			
Component Serial Number:		<i>(Amounts in Thousands of Dollars)</i>							
		Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item		Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a		b	c	d	e	f	g	h	i

This reprogramming action transfers \$1,000.000 million from the Drug Interdiction and Counter-Drug Activities, Defense, 19/19, appropriation to Operation and Maintenance, Army, 19/19, appropriation for drug interdiction and counter-drug activities consistent with the provisions in division A of Title VI of Public Law 115-245, the Department of Defense (DoD) Appropriations Act, 2019.

Realignment of funds between Drug Interdiction projects may be accomplished only with the concurrence of the Office of the Deputy Assistant Secretary of Defense, Counternarcotics and Global Threats. No funds made available in this reprogramming action may be obligated for projects pursuant to sections 321, 322, or 333 of Title 10, United States Code. This prohibition will be noted on all Funding Authorization Documents.

FY 2019 REPROGRAMMING INCREASE:**+1,000,000****Operation and Maintenance, Army, 19/19****+1,000,000****Budget Activity 01: Operating Forces**

Counter-Narcotics Support	-	216,874	+1,000,000	1,216,874
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FY 2019 REPROGRAMMING DECREASE:**-1,000,000****Drug Interdiction and Counter-Drug Activities, Defense, 19/19****-1,000,000****Budget Activity 01: Counter-Narcotics Support**

1,238,306	1,238,306	-1,000,000	238,306
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Explanation: Transfers funds from the Drug Interdiction and Counter-Drug Activities, Defense, 19/19, appropriation to Operation and Maintenance, Army, 19/19, appropriation to support the Department of Homeland Security (DHS) request for DoD to support drug interdiction and counter-drug activities through the construction of roads and fences, and the installation of lighting, to block drug smuggling corridors across international boundaries of the United States. This is a base budget requirement.

Approved (Signature and Date)

Elaine McCook

3/25/19

EXHIBIT E

Executive Secretary


U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

March 29, 2019

MEMORANDUM FOR: CAPT Hallock N. Mohler Jr.
Executive Secretary
Department of Defense

FROM: Christina Bobb 
Executive Secretary
Department of Homeland Security

SUBJECT: Modification Request: Section 284 funding for Border Barrier Construction

REFERENCE: (a) February 25, 2019, DHS Request for Assistance Pursuant to 10 U.S.C. §284
(b) March 25, 2019, DoD Response to DHS Request for Assistance Pursuant to 10 U.S.C. §284

Overview

The Department of Homeland Security (DHS) thanks the Department of Defense for both the response and approval of the use of Section 284 funding for the construction of border fencing and roads and the installation of lighting as characterized in the Request for Assistance. The completion of these projects will assist CBP significantly in controlling the flow of migrants in between the Ports of Entry (POE) on the Southwest Border.

Clarifications

Prior to construction for border barrier projects, Customs and Border Protection (CBP) conducts an Alternatives Analysis (AA), which compares operational data against the known and tested impedance value of barrier and other related design attributes. The analysis examines key operational data points, including but not limited to:

- Vanishing time
- Response time
- Current staffing
- Presence and effectiveness of existing technology and infrastructure
- Subject matter expertise of agents intimately familiar with operations in these areas

Such analyses have often demonstrated that higher barriers and/or barriers augmented with anticlimb features significantly increase the amount of time that migrants require to reach a

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vanishing point. A more robust barrier solution (i.e. 30 foot steel bollard vice 18 foot steel bollard and features), increases the vanishing time and provides USBP agents with a greater ability to with vice without antilimb interdict migrants.

CBP undertook AAs for the proposed Section 284-funded projects; two of these AAs have been completed, with the following conclusions:

- Sector Yuma Project 2: Requirement for 18 foot steel bollard fencing with 5 foot antilimb steel plate
- Sector El Paso Project 1: Requirement for 30 foot steel bollard fencing with 5 foot antilimb steel plate

The AA for Sector Yuma Project 1, USBP's highest priority project, is still underway, with results expected the week of April 1st. Preliminary indications from the analysis, however, indicate 30 foot bollard with antilimb features is the likely requirement. DHS will communicate to OSD the finalized requirements for Sector Yuma Project upon completion of the AA.

In light of the analyses summarized above, DHS requests that specifications for the Sector El Paso Project 1 be amended to 30ft bollard with antilimb features, and that DoD be prepared to likewise amend the specifications for Sector Yuma Project 1. DHS also requests DoD directly follow the prioritization set forth in Reference (a) as closely as possible even if that means completing partial projects.

Please direct any questions to Ntina K. Cooper, Deputy Executive Director, Strategic Planning & Analysis, USBP, CBP (202) 344-1417.

EXHIBIT F



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

APR - 9 2019

MEMORANDUM FOR ACTING SECRETARY OF HOMELAND SECURITY

SUBJECT: Modification of Department of Defense Support to Block Drug-Smuggling Corridors

Thank you for your April 5, 2019 request that the Department of Defense provide modified specifications on projects approved for construction under 10 U.S.C. § 284 in order to support more effectively the Department of Homeland Security's efforts to secure the southern border.

10 U.S.C. § 284(b)(7) authorizes the Department of Defense to construct roads and fences, and to install lighting, to block drug-smuggling corridors across international boundaries of the United States in support of counter-narcotic activities of Federal law enforcement agencies. For the following reasons, I have concluded that this modified request continues to satisfy the statutory requirements:

- The Department of Homeland Security (DHS)/Customs and Border Protection (CBP) is a Federal law enforcement agency;
- DHS has identified each project area as a drug-smuggling corridor; and
- The work requested by DHS to block these identified drug-smuggling corridors involves construction of fences (including a linear ground detection system), construction of roads, and installation of lighting (supported by grid power and including imbedded cameras).

Accordingly, I have approved construction of pedestrian fencing for Yuma Sector Projects 1 and El Paso Sector Project 1 with 30-foot steel bollard with anti-climb plate, and Yuma Sector Project 2, with 18-foot steel bollard with anti-climb plate, as requested in your April 5, 2019 request. Road construction and improvements, and lighting installation, will be included as described in your February 25, 2019 request.

As the proponent of the requested action, CBP will serve as the lead agency for environmental compliance and will be responsible for providing all necessary access to land. I request that DHS place the highest priority on completing these actions for the projects identified above. DHS will accept custody of the completed infrastructure, account for that infrastructure in its real property records, and operate and maintain the completed infrastructure.

I have authorized the Commander, U.S. Army Corps of Engineers, to coordinate directly with DHS/CBP and immediately begin planning and executing support to DHS/CBP by

undertaking the projects identified above in clearly defined segments to maximize the number of miles of barrier projects within the available funds (up to \$1 billion).

Additional support may be provided in the future, subject to the availability of funds and other factors.

A handwritten signature in black ink, reading "Patrick M. Shanahan". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Patrick M. Shanahan
Acting

EXHIBIT G



DEPARTMENT OF DEFENSE

[LEGACY HOMEPAGE](#) > [NEWS](#) > [CONTRACTS](#) > [CONTRACT VIEW](#)

Contracts for April 9, 2019

April 9, 2019

Contracts

Release No: CR-066-19

ARMY

SLSCO Ltd., Galveston, Texas, was awarded a \$789,000,000 firm-fixed-price contract for border replacement wall construction. Nine bids were solicited with six bids received. Work will be performed in Santa Teresa, New Mexico, with an estimated completion date of Oct. 1, 2020. Fiscal 2019 operations and maintenance, Army funds in the amount of \$388,999,999 were obligated at the time of the award. U.S. Army Corps of Engineers Albuquerque, New Mexico, is the contracting activity (W912PP-19-C-0018).

Barnard Construction Co. Inc., Bozeman, Montana, was awarded an \$187,000,000 firm-fixed-price contract for design-bid-build construction project for primary pedestrian wall replacement. Four bids were solicited with three bids received. Work will be performed in Yuma, Arizona, with an estimated completion date of Sept. 30, 2020. Fiscal 2019 operations and maintenance, Army funds in the amount of \$93,499,999 were obligated at the time of the award. U.S. Army Corps of Engineers, Los Angeles, California, is the contracting activity (W912PL-19-C-0013).

The Dutra Group, San Rafael, California, was awarded a \$10,000,000 firm-fixed-price contract for rental of hopper dredge with attendant plant and operators for maintenance dredging in Alabama, Mississippi, and Florida. Bids were solicited via the internet with two received. Work locations and funding will be determined with each order, with an estimated completion date of June 9, 2020. U.S. Army Corps of Engineers, Mobile, Alabama, is the contracting activity (W91278-19-D-0019).

DEFENSE LOGISTICS AGENCY

Vital Images Inc., Minnetonka, Minnesota, has been awarded a maximum \$100,000,000 firm-fixed-price, indefinite-delivery/indefinite-quantity contract for radiology and imaging systems, maintenance and training services. This is a five-year base contract with one five-year option. This was a competitive acquisition with 27 responses received. Location of performance is Minnesota, with an April 8, 2024, performance completion date. Using customers are Army, Navy, Air Force, Marine Corps and federal civilian agencies. Type of appropriation is fiscal 2019 through 2020 defense working capital funds. The contracting activity is the Defense Logistics Agency Troop Support, Philadelphia, Pennsylvania (SPE2D1-19-D-0012).

AAR Aircraft Services, Oklahoma City, Oklahoma, has been awarded a minimum \$13,701,177 fixed-price with economic-price-adjustment contract for fuel. This was a competitive acquisition with 148 responses received. This is a 47-month base contract with a six-month option period. Location of performance is Oklahoma, with a March 31, 2023, performance completion date. Using customers are Army, Navy, Air Force, Marine Corps and federal civilian agencies. Type of appropriation is fiscal 2019 through fiscal 2023 defense working capital funds. The contracting activity is the Defense Logistics Agency Energy, Fort Belvoir, Virginia (SPE607-19-D-0061).

AIR FORCE

Pergravis LLC, Tampa, Florida, has been awarded an estimated \$73,220,000 firm-fixed-price contract for power converting and continuation interfacing equipment emergency maintenance/preventative maintenance. This contract provides for support of 700 uninterruptable power supply systems across every Air Force major command. Work will be performed in various locations in the U.S. and overseas, and is expected to be complete by April 13, 2024. This contract is the result of a competitive acquisition and three offers were received. Fiscal 2019 other station funds in the amount of \$137,440 are being obligated at

the time of award. Air Force Life Cycle Management Center, Hill Air Force Base, Utah, is the contracting activity (FA8217-19-D-0002).

Al Qabandi United Co. W.L.L., Kuwait City, Kuwait, is being awarded an estimated \$30,000,000 firm-fixed-price contract for vehicle lease services. This contract provides Ali Al Salem Air Base, Kuwait, and surrounding tenant units, with non-tactical vehicles for transportation purposes. Work will be performed at Ali Al Salem Air Base, Kuwait, and is expected to be complete by April 12, 2024. This award is the result of a competitive acquisition and 67 offers were received. Fiscal 2019 operations and maintenance funds in the amount of \$16,000 are being obligated on a task order at the time of award. The 386th Expeditionary Contracting Squadron, Ali Al Salem AB, Kuwait, is the contracting activity (FA5703-19-D-0001).

Textron Aviation Defense LLC, Wichita, Kansas, has been awarded a \$15,350,000 firm-fixed-price modification (P00007) to previously awarded contract FA8617-17-C-6225 for continued support for the completion of the reconstitution of 15 T-6A aircraft. This modification provides for a schedule extension to complete the reconstitution of 15 T-6A aircraft and procure cartridge actuated devices and propellant actuated devices. Work will be performed at Imam Ali Air Base, Iraq, and is expected to be complete by July 31, 2019. This modification involves 100 percent foreign military sales to Iraq, and brings the total cumulative face value of the contract to \$35,338,422. Foreign military sales funds in the full amount are being obligated at the time of award. Air Force Life Cycle Management Center, Training Aircraft Division, Wright-Patterson Air Force Base, Ohio, is the contracting activity.

2101 LLC, doing business as Intercontinental Truck Body, Anaconda, Montana, has been awarded a \$10,566,494 firm-fixed-price delivery order for tow tractors. This delivery order provides for the procurement of flight line tow tractors used to tow fighter aircraft, munition trailers and ground support equipment. Work will be performed in Anaconda, Montana, and is expected to be complete by Sept. 1, 2021. Fiscal 2018 and 2019 procurement funds in the full amount are being obligated at the time of award. Air Force Life Cycle Management Center, Robins Air Force Base, Georgia, is the contracting activity (FA8534-19-F-0017).

NAVY

Raytheon Intelligence, Information and Services, Indianapolis, Indiana, is awarded a \$47,378,485 firm-fixed-price contract to procure 99 LAU-115 and 100 LAU-116 guided missile launchers for the Navy as well as 62 LAU-115 and 68 LAU-116 guided missile launchers for the government of Kuwait to enable F/A-18 aircraft to carry and launch AIM-120 and AIM-9X missiles. Work will be performed in Indianapolis, Indiana, and is expected to be completed in July 2022. Fiscal 2017 and 2018 aircraft procurement (Navy); and foreign military sales funds in the amount of \$47,378,485 will be obligated at time of award, \$17,285,182 of which will expire at the end of the current fiscal year. This contract was not competitively procured pursuant to Federal Acquisition Regulation 6.302-1. The Naval Air Systems Command, Patuxent River, Maryland, is the contracting activity (N00019-19-C-0056).

Raytheon Co., Portsmouth, Rhode Island, is awarded a \$33,347,011 firm-fixed-priced, indefinite-delivery/indefinite supply quantity contract, for up to 28 electronic throttle control units and auxiliary components to support Naval Surface Warfare Center Philadelphia Division. This contract is for the purpose of supporting the Virginia class submarine program. The proposed contract is for procurement of replacement electronic throttle control unit (ETCU) hardware which is currently obsolete and can no longer be efficiently supported. The proposed contract includes the hardware fabrication for new construction platforms and all back-fit systems to mitigate parts obsolescence, update/maintain the ETCU technical data package, and design verification testing on limited production units for quality assurance. Work will be performed in Portsmouth, Rhode Island, and is expected to be completed by April 2024. Fiscal 2018 shipbuilding and conversion (Navy) funding in the amount of \$9,165,306 will be obligated at time of award and will not expire at the end of the current fiscal year. This contract was solicited competitively via the Federal Business Opportunities website, with one offer received. The Naval Surface Warfare Center, Philadelphia Division, Philadelphia, Pennsylvania, is the contracting activity (N64498-19-D-4016).

Marshall Communications Corp.,* Ashburn, Virginia, is awarded \$9,805,873 for firm-fixed-price delivery order N0042119F0555 against a previously issued NASA Solutions for Enterprise-wide procurements contract (NNG15SD82B). This order provides for information technology supplies and services in support of the Teamcenter Product Lifecycle Management configuration for the Commander, Fleet Readiness Centers business process, enabling digital data updates, sharing and visibility across all levels of aviation maintenance. Work will be performed at the Naval Air Station, Patuxent River, Maryland (70 percent); and the Fleet Readiness Center East, Cherry Point, North Carolina (30 percent), and is expected to be completed in April 2020. Fiscal 2019 research, development, test and evaluation (Navy); and Section 852 funds in the amount of \$9,805,873 will be obligated at time of award, none of which will expire at the end of the current fiscal year. The Naval Air Warfare Center Aircraft Division, Patuxent River, Maryland, is the contracting activity.

Barnhart-Reese Construction, Inc.,* San Diego, California, is awarded \$8,137,970 for firm-fixed-price task order N6247319F4452 under a previously awarded multiple award construction contract (N62473-17-D-4635) for construction of a full motion trainer facility at Marine Corps Base, Camp Pendleton. This project will construct a new 10,828 SF facility to centralize infrastructures, to consolidate all aspects of training in one physical location, to provide operational support for home ported detachments, virtual and hands-on maintenance training, operator training, and to support contingencies in accordance with combatant and commander tasking. The task order also contains two planned modifications, which if exercised would increase cumulative task order value to \$8,171,720. Work will be performed in Oceanside, California, and is expected to be completed by October 2020. Fiscal 2019 military construction (Navy) contract funds in the amount of \$8,137,970 are obligated on this award and will not expire at the end of the current fiscal year. Four proposals were received for this task order. Naval Facilities Engineering Command Southwest, San Diego, California, is the contracting activity.

BAE Systems Jacksonville Ship Repair, Jacksonville, Florida, is awarded an \$8,123,072 cost-plus-award-fee modification to previously awarded contract N00024-16-C-2302 to exercise options for the USS Wichita (LCS 13) post-

shakedown availability (PSA). A PSA is accomplished within a period of approximately 10-16 weeks between the time of ship custody transfer to the Navy and the shipbuilding and conversion, Navy obligation work limiting date. The PSA encompasses all of the manpower, support services, material, non-standard equipment and associated technical data and documentation required to prepare for and accomplish the PSA. The work to be performed will include correction of government-responsible trial card deficiencies, new work identified between custody transfer and the time of PSA and incorporation of approved engineering changes that were not incorporated during the construction period which are not otherwise the building yard's responsibility under the ship construction contract. Work will be performed in Jacksonville, Florida, and is expected to be complete by March 2020. Fiscal 2019 shipbuilding and conversion (Navy) funding in the amount of \$5,896,048; fiscal 2013 shipbuilding and conversion (Navy) funding in the amount of \$1,482,102; and fiscal 2018 other procurement (Navy) funding in the amount of \$293,384 will be obligated at time of award and will not expire at the end of the current fiscal year. The Naval Sea Systems Command, Washington, District of Columbia, is the contracting activity.

Huntington-Ingalls Industries - Ingalls Shipbuilding, Pascagoula, Mississippi, is awarded a \$7,889,490 cost-plus-fixed-fee modification to previously awarded contract N00024-17-C-2473 to exercise an option for the accomplishment of emergent work as required, including management and labor efforts for the post-delivery planning yard services in support of the LHA-7 amphibious assault ship. Work will be performed in Pascagoula, Mississippi, and is expected to be completed December 2019. Fiscal 2019 shipbuilding and conversion (Navy) funding in the amount of \$7,889,490 will be obligated at time of award and will not expire at the end of the current fiscal year. The Naval Sea Systems Command, Washington, District of Columbia, is the contracting activity.

MISSILE DEFENSE AGENCY

Lockheed Martin Rotary and Mission Systems, Moorestown, New Jersey, is awarded a \$7,438,922 cost-plus-incentive-fee modification (P00322) to previously awarded contract HQ0276-10-C-0001. Under this modification, the contractor

will provide software maintenance support, identify, analyze, correct, test, and merge/rebase of the Common Source Library infrastructure and software discrepancies originating from heritage Aegis Ballistic Missile Defense Computer Programs. This modification increases the total cumulative face value of the contract from \$2,973,087,008 to \$2,980,525,930. Work will be performed in Moorestown, New Jersey, with an expected completion date of Oct. 31, 2019. Fiscal 2019 operations and maintenance funds in the amount of \$1,045,902 will be obligated at the time of award. The Missile Defense Agency, Dahlgren, Virginia, is the contracting activity.

*Small business

SHARE CONTRACTS

EXHIBIT H



ASSISTANT SECRETARY OF DEFENSE
2600 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-2600

HOMELAND DEFENSE &
GLOBAL SECURITY

APR 18 2019

MEMORANDUM FOR MILITARY ADVISOR, DEPARTMENT OF HOMELAND
SECURITY

SUBJECT: Modification of DHS Request for Assistance Pursuant to 10 U.S.C. § 284

Thank you for your April 12, 2019, memorandum requesting that DoD de-scope approximately four (4) of the six (6) miles for Yuma Sector Project 2.

I have reviewed and approved your request, and will instruct the U.S. Army Corps of Engineers to take the necessary contracting action in response to your request. DoD will use those funds previously approved by the Acting Secretary of Defense that are no longer required for Yuma Sector Project 2 to fund additional miles of 30-foot bollard fencing, roads, and lighting in the El Paso Sector 1 project. As previously agreed, DHS retains the responsibility to address environmental compliance for all construction undertaken pursuant to 10 U.S.C. § 284 and to provide the necessary access to land (i.e., real estate rights).

I appreciate the opportunity to support the Department of Homeland Security's mission of securing and managing our Nation's southern border.

A handwritten signature in black ink, reading "Kenneth P. Rapuano", is positioned above the printed name.

Kenneth P. Rapuano
Assistant Secretary of Defense
Homeland Defense & Global Security

EXHIBIT 9

[FULL COMMITTEE PRINT]

Union Calendar No. _____

116TH CONGRESS
1ST SESSION

H. R. _____

[Report No. 116-____]

Making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2020, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

_____, 2019

Ms. WASSERMAN SCHULTZ, from the Committee on Appropriations, reported the following bill; which was committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

Making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2020, and for other purposes.

1 network unless such network blocks the viewing,
2 downloading, and exchanging of pornography.

3 (b) Nothing in subsection (a) shall limit the use of
4 funds necessary for any Federal, State, tribal, or local law
5 enforcement agency or any other entity carrying out crimi-
6 nal investigations, prosecution, or adjudication activities.

7 SEC. 609. None of the funds made available in this
8 Act may be used by an agency of the executive branch
9 to pay for first-class travel by an employee of the agency
10 in contravention of sections 301–10.122 through 301–
11 10.124 of title 41, Code of Federal Regulations.

12 SEC. 610. None of the funds made available in this
13 Act may be used to execute a contract for goods or serv-
14 ices, including construction services, where the contractor
15 has not complied with Executive Order No. 12989.

16 SEC. 611. None of the funds made available by this
17 Act may be used by the Department of Defense or the
18 Department of Veterans Affairs to lease or purchase new
19 light duty vehicles for any executive fleet, or for an agen-
20 cy's fleet inventory, except in accordance with Presidential
21 Memorandum—Federal Fleet Performance, dated May
22 24, 2011.

23 SEC. 612. Notwithstanding any other provision of
24 law, none of the funds appropriated in this or any other
25 Act for a military construction project, as defined by sec-

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79

1 tion 2801 of title 10, United States Code, for any of fiscal
2 years 2015 through 2019 or for fiscal year 2020 may be
3 obligated, expended, or used to design, construct, or carry
4 out a project to construct a wall, barrier, fence, or road
5 along the Southern border of the United States or a road
6 to provide access to a wall, barrier, or fence constructed
7 along the Southern border of the United States.

8 This Act may be cited as the “Military Construction,
9 Veterans Affairs, and Related Agencies Appropriations
10 Act, 2020”.

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[FULL COMMITTEE PRINT]

Union Calendar No. _____

116TH CONGRESS
1ST Session

H. R.

[Report No. 116-_____] _____

A BILL

Making appropriations for military construction,
the Department of Veterans Affairs, and related
agencies for the fiscal year ending September 30,
2020, and for other purposes.

_____, 2019

Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

EXHIBIT 10

Unclassified

REPROGRAMMING ACTION – PRIOR APPROVAL

Page 1 of 1

Subject: Counternarcotics for U.S. Southern Command		DoD Serial Number: FY 07-41 PA
Appropriation Title: Military Personnel, Army, 07/07; and Drug Interdiction and Counter-Drug Activities, Defense, 07/07		Includes Transfer? Yes

Component Serial Number:	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

This reprogramming action is submitted for prior approval because it uses general transfer authority pursuant to section 8005 of Public Law 109-289, the Department of Defense Appropriations Act, 2007; and section 1001 of Public Law 109-364, the John Warner National Defense Authorization Act for Fiscal Year (FY) 2007. This action transfers \$1.3 million from the Military Personnel, Army, 07/07, appropriation to Drug Interdiction and Counter-Drug Activities, Defense, 07/07, appropriation. This action reprograms funds in support of higher priority items, based on unforeseen military requirements, than those for which funds were originally appropriated; and is determined to be necessary in the national interest. They meet all administrative and legal requirements, and none of the items has been denied previously by the Congress.

FY 2007 REPROGRAMMING INCREASE: **+1,300**

Drug Interdiction and Counter-Drug Activities, Defense, 07/07 **+1,300**

P.L. 109-289, Title VI	973,874	973,874	+1,300	975,174
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Explanation: Funding will be used to support U.S. Southern Command's counternarcotics efforts in Central America through the construction of an infrastructure project (Blue Fields/Corn Island facility) in Nicaragua. This project will increase the interdiction capability of the Western Caribbean against the "go-fast" boat threat that is transporting cocaine to the United States.

FY 2007 REPROGRAMMING DECREASE: **-1,300**

Military Personnel, Army, 07/07 **-1,300**

Budget Activity 4: Subsistence of Enlisted Personnel

3,810,702	3,601,556	-1,300	3,600,256
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Explanation: The Defense Logistics Agency recently implemented a business process change that provided the Army with discrete visibility over theater premium transportation charges for the Subsistence-in-Kind account. Previously, these charges were embedded in subsistence bills charged to the Military Personnel appropriation. The charges now post to the Operation and Maintenance appropriation. As a result, the Military Personnel appropriation subsistence account has an asset.

Approved (Signature and Date)

SEP 7 2007

DAVID R. OBEY, WISCONSIN, CHAIRMAN

JOHN P. MURTHA, PENNSYLVANIA
 NORMAN D. DICKS, WASHINGTON
 ALAN B. MOLLOHAN, WEST VIRGINIA
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 DAVID E. PRICE, NORTH CAROLINA
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 ROBERT E. "BUD" CRAMER, JR., ALABAMA
 PATRICK J. KENNEDY, RHODE ISLAND
 MAURICE D. HINCHY, NEW YORK
 LUCILLE ROYDAL-ALLARD, CALIFORNIA
 SAM FARR, CALIFORNIA
 JESSE L. JACKSON, JR., ILLINOIS
 CAROLYN C. KILPATRICK, MICHIGAN
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 CHAKA FATTAH, PENNSYLVANIA
 STEVEN R. NOTTMAN, NEW JERSEY
 SANFORD D. BISHOP, JR., GEORGIA
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 BARBARA LEE, CALIFORNIA
 TOM UDALL, NEW MEXICO
 ADAM SCHIFF, CALIFORNIA
 MICHAEL HONDA, CALIFORNIA
 BETTY MCCOLLUM, MINNESOTA
 STEVE ISRAEL, NEW YORK
 TIM RYAN, OHIO
 C.A. "DUTCH" RUPPERSBERGER, MARYLAND
 BEN CHANDLER, KENTUCKY
 DEBBIE WASSERMAN SCHULTZ, FLORIDA
 CIRIO RODRIGUEZ, TEXAS

Congress of the United States
House of Representatives
Committee on Appropriations
Washington, DC 20515-6015

September 24, 2007

RECEIVED
 SEP 25 2007

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 C. W. BILL YOUNG, FLORIDA
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 HAROLD ROGERS, KENTUCKY
 FRANK R. WOLF, VIRGINIA
 JAMES T. WALSH, NEW YORK
 DAVID L. HOBSON, OHIO
 JOE KNOLLENBERG, MICHIGAN
 JACK KINGSTON, GEORGIA
 RODNEY P. FRELINGHUYSEN, NEW JERSEY
 ROGER F. WICKER, MISSISSIPPI
 TODD TIAHRT, KANSAS
 ZACH WAMP, TENNESSEE
 TOM LATHAM, IDAHO
 ROBERT B. ADERHOLT, ALABAMA
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 VIRGIL H. GOODE, JR., VIRGINIA
 JOHN T. DODD, CALIFORNIA
 RAY LAHODD, ILLINOIS
 DAVE WELDON, FLORIDA
 MICHAEL K. SIMPSON, IDAHO
 JOHN ARNEY CULBERSON, TEXAS
 MARK STEVEN KIRK, ILLINOIS
 ANDER CRENSHAW, FLORIDA
 DENNIS R. REHBERG, MONTANA
 JOHN R. CARTER, TEXAS
 RODNEY ALEXANDER, LOUISIANA

CLERK AND STAFF DIRECTOR
 ROB NABORS
 TELEPHONE:
 (202) 225-2771

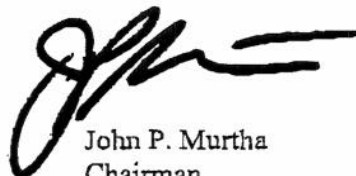
The Honorable Tina W. Jonas
 Under Secretary of Defense, Comptroller
 Department of Defense
 Washington, DC 20301

Dear Madam Secretary:

The Committee has received and reviewed your request to reprogram \$1,300,000 within Military Personnel, Army, 07/07; and Drug Interdiction and Counter-Drug Activities, Defense, 07/07 (FY 07-41 PA).

The Committee interposes no objection to the proposed reprogramming.

Sincerely,



John P. Murtha
 Chairman
 Defense Subcommittee

ROBERT C. OYRD, WEST VIRGINIA, CHAIRMAN

DANIEL K. INOUE, HAWAII
PATRICK J. LEAHY, VERMONT
TOM HARKIN, IOWA
BARBARA A. MIKULSKI, MARYLAND
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LAMAR ALEXANDER, TENNESSEE

United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, DC 20510-6025

<http://appropriations.senate.gov>

CHARLES KIEFFER, STAFF DIRECTOR
BRUCE GAND, MINORITY STAFF DIRECTOR

September 20, 2007

RECEIVED
SEP 25 2007

The Honorable Tina W. Jonas
Under Secretary of Defense (Comptroller)
The Pentagon
Washington DC 20301

Dear Ms. Jonas:

The Committee has reviewed your fiscal year 2007 reprogramming action FY 07-41 PA, dated September 7, 2007, and supports the transfer of funds requested.

Sincerely,



TED STEVENS
Ranking Member
Committee on Appropriations
Subcommittee on Defense



DANIEL K. INOUE
Chairman
Committee on Appropriations
Subcommittee on Defense

IKE SKELTON, MISSOURI, CHAIRMAN
JOHN SPRATT, SOUTH CAROLINA
SOLOMON P. ORTIZ, TEXAS
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SUSAN A. DAVIS, CALIFORNIA
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BRAD ELLSWORTH, INDIANA
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DAVID LOEBSACK, IOWA
KIRSTEN E. GILLIBRAND, NEW YORK
JOE SESTAK, PENNSYLVANIA
GABRIELLE GIFFORDS, ARIZONA
ELIJAH E. CUMMINGS, MARYLAND
KENDRICK B. MEEK, FLORIDA
KATHY CASTOR, FLORIDA

HOUSE COMMITTEE ON ARMED SERVICES

U.S. House of Representatives

Washington, DC 20515-6035

ONE HUNDRED TENTH CONGRESS

September 19, 2007

RECEIVED
SEP 24 2007

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ERIN C. CONATON, STAFF DIRECTOR

The Honorable Tina W. Jonas
Under Secretary of Defense, Comptroller
3E822 Defense, Pentagon
Washington, D.C. 20301

Dear Secretary Jonas:

The House Committee on Armed Services has completed its review of the proposed reprogramming FY07-41 PA, dated September 7, 2007. This reprogramming would transfer \$1.3 million from the Military Personnel, Army, 07/07 appropriation to the Drug Interdiction and Counter-Drug Activities, Defense, 07/07 appropriation.

The committee interposes no objections to the proposed reprogramming.

Sincerely,



IKE SKELTON
Chairman



DUNCAN HUNTER
Ranking Member

IS/DH:amh

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RICHARD D. DEBBES, STAFF DIRECTOR
MICHAEL VINCENT KOSTRY, REPUBLICAN STAFF DIRECTOR

United States Senate
COMMITTEE ON ARMED SERVICES
WASHINGTON, DC 20510-6050

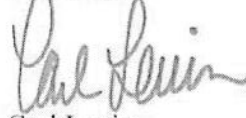
September 20, 2007 ✓

The Honorable Tina Jonas
Under Secretary of Defense (Comptroller)
3E822 Pentagon
Washington, D.C. 20301-1100

Dear Secretary Jonas:

The Committee on Armed Services has reviewed reprogramming requests FY07-37 PA, FY07-39 PA, FY07-40 PA, FY07-41 PA, and FY07-42 PA and has no objection to your proceeding with these transfers.

Sincerely,



Carl Levin
Chairman

EXHIBIT 11

Unclassified

REPROGRAMMING ACTION –PRIOR APPROVAL

Page 1 of 1

Subject: National Guard Border Security Shortfalls	DoD Serial Number: FY 06-31 PA
Appropriation Title: Operation and Maintenance, Defense-Wide, 06/07; Operation and Maintenance, Air Force, 06/06; and Operation and Maintenance, Navy Reserve, 06/06	Includes Transfer? Yes

Component Serial Number:	(Amounts in Thousands of Dollars)							
	Program Base Reflecting Congressional Action		Program Previously Approved by Sec Def		Reprogramming Action		Revised Program	
Line Item	Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
a	b	c	d	e	f	g	h	i

This reprogramming action is submitted for approval because it uses \$415.0 million of general transfer authority pursuant to section 8005 of Public Law 109-148, the Department of Defense (DoD) Appropriations, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006; and section 1001 of Public Law 109-163, the National Defense Authorization Act for Fiscal Year (FY) 2006. This reprogramming action provides funding in support of higher priority items, based on unforeseen military requirements, than those for which originally appropriated; and are determined to be necessary in the national interest. It meets all administrative and legal requirements, and none of the items have previously been denied by the Congress. Specifically, this reprogramming action transfers \$415.0 million from the Operation and Maintenance, Air Force, 06/06, (\$200.0 million) and the Operation and Maintenance, Navy Reserve, 06/06, (\$215.0 million) appropriations to the Operation and Maintenance, Defense-Wide, 06/07, appropriation to support the National Guard in its border security mission.

FY 2006 REPROGRAMMING INCREASE:**+415,000****Operation and Maintenance, Defense-Wide, 06/07****+415,000****Border Security**

708,000

392,700

+415,000

807,700

Explanation: Funds are required to support critical Operation Jump Start efforts for the National Guard during FY 2007.

FY 2006 REPROGRAMMING DECREASES:**-415,000****Operation and Maintenance, Air Force, 06/06****-200,000****Budget Activity 1: Operating Forces**

17,672,772

17,786,655

-200,000

17,586,655

Operation and Maintenance, Navy Reserve, 06/06**-215,000****Budget Activity 1: Operating Forces**

1,702,889

1,691,467

-215,000

1,476,467

Explanation: Funds appropriated in Division B, Title I, Chapter 2 of Public Law 109-148 are excess.

Approved (Signature and Date)

SEP 22 2006

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United States Senate

COMMITTEE ON ARMED SERVICES

WASHINGTON, DC 20510-6050

September 28, 2006

The Honorable Tina W. Jonas
Under Secretary of Defense (Comptroller)
3E822 Pentagon
Washington, D.C. 20301-1100

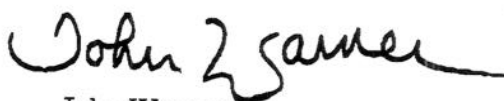
Dear Secretary Jonas:

The Committee on Armed Services has reviewed reprogramming request FY 06-31 PA. The Committee is disappointed that the revised plan for Operation Jump Start that was briefed to the committee staff to justify this reprogramming has changed from the plan briefed to the Congress when the supplemental request for this operation was submitted just four months ago. The plan was submitted to Congress with the assurance that at least two-thirds of the National Guard manpower for Operation Jump Start would be provided by personnel as part of their Annual Training (AT). The Committee is also disappointed that no attempt was made to brief Congress on these changes until the Department decided, at the last moment, to capture expiring funds to cover this substantial cost increase, leaving the committees very little time to obtain information on these proposed changes before acting. With respect to the funding source, while the statutory language can be read to provide the required authority to transfer these funds, we believe that such transfers go beyond the original congressional intent of providing separate funding for specific emergency purposes and should not become a standard practice.

The Committee does not object to these transfers, subject to the following condition. When the supplemental was submitted to the Congress in May, we were assured that no additional funding would be needed for fiscal year 2007. Before this \$415 million in additional funding for fiscal year 2007 is obligated, the committee directs the Department to provide the congressional defense committees with a fiscal year 2007 plan for this operation that specifies the new projected breakout of AT and Active Duty Special Work many years for fiscal year 2007, and the projected cost of this revised plan.

With kind regards, I am

Sincerely,



John Warner
Chairman

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United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, DC 20510-6025

<http://appropriations.senate.gov>

J. KEITH KENNEDY, STAFF DIRECTOR
TERRENCE E. SAUVAIN, MINORITY STAFF DIRECTOR

September 26, 2006

The Honorable Tina W. Jonas
Under Secretary of Defense (Comptroller)
The Pentagon
Washington DC 20301

Dear Ms. Jonas:

The Committee has reviewed your fiscal year 2006 reprogramming action
FY 06-31 PA, dated September 22, 2006, and will interpose no objection.

With best wishes,

Cordially,



DANIEL K. INOUE
Ranking Member
Committee on Appropriations
Subcommittee on Defense



TED STEVENS
Chairman
Committee on Appropriations
Subcommittee on Defense

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COMMITTEE ON ARMED SERVICES

U.S. House of Representatives

Washington, DC 20515-6035

ONE HUNDRED NINTH CONGRESS

September 28, 2006

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ROBERT L. SIMMONS, STAFF DIRECTOR

Honorable Tina W. Jonas
 Under Secretary of Defense, Comptroller
 3E822 Defense, Pentagon
 Washington, D.C. 20301

Dear Secretary Jonas:


The House Committee on Armed Services has completed its review of the proposed reprogramming FY06-31 PA, dated September 22, 2006. The request seeks approval to transfer \$200.0 million from Air Force Operation and Maintenance Accounts and \$215.0 million from Navy Reserve Operation and Maintenance Accounts to Defense-Wide Operation and Maintenance Accounts. This transfer will support Operation Jump Start efforts for the National Guard during fiscal year 2007.

The committee interposes no objections to the proposed reprogramming, however, this approval is based on the understanding that no additional funding will be required for Operation Jump Start during fiscal year 2007. In addition, the committee understands that the reprogrammed funds are excess to both the Air Force Operation and Maintenance Account and the Navy Reserve Operation and Maintenance Account and that all requirements related to Hurricane Katrina relief are met.

In conclusion, the committee is greatly disturbed by the late notice provided for this reprogramming action but will grant approval of the request due to its strong support for Operation Jump Start. Furthermore, the committee is displeased by the Department's gross underestimation of costs related to the mission, based on faulty assumptions regarding the availability of Army National Guard Military Personnel funds. These assumptions were at best overly optimistic, reflecting poor planning and communication between the National Guard Bureau and the states' adjutant generals. In the future, the committee expects earlier notice and greater detail in connection with these reprogramming requests.

Sincerely,


 Duncan Hunter
 Chairman


 Ike Skelton
 Ranking Member

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Congress of the United States
House of Representatives
Committee on Appropriations
Washington, DC 20515-6015

September 25, 2006

Received
Sep 26, 2006

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CLERK AND STAFF DIRECTOR
 FRANK M. CUSHING
 TELEPHONE:
 (202) 225-2771

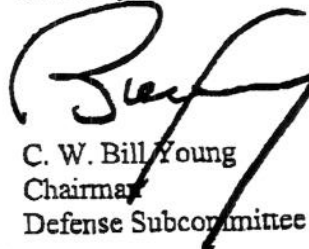
The Honorable Tina W. Jonas
 Under Secretary of Defense, Comptroller
 Department of Defense
 Washington, DC 20301

Dear Madam Secretary:

The Committee has received and reviewed your request to reprogram \$415,000,000 within Operation and Maintenance, Defense-Wide, 06/07; Operation and Maintenance, Air Force, 06/06; and Operation and Maintenance, Navy Reserve, 06/06 (FY 06-31 PA).

The Committee interposes no objection to the proposed reprogramming.

Sincerely,


 C. W. Bill Young
 Chairman
 Defense Subcommittee

DEFENDANTS' INDEX OF EXHIBITS

Ex. 1	Letter from Secretary of Homeland Security Kirstjen M. Nielsen to Members of Congress (Mar. 28, 2019)
Ex. 2	Declaration of Jerry B. Martin, Chief of U.S. Border Patrol Strategic Planning and Analysis Directorate (April 24, 2019)
Ex. 3	Joint Statement of John Rood, Under Secretary of Defense for Policy, and Vice Admiral Michael Gilday, Director of Operations for the Joint Chiefs of Staff, H. Armed Servs. Comm. Hr'g on S. Border Defense Support (Jan. 29, 2019)
Ex. 4	DHS Southwest Border Migration Statistics FY 2019
Ex. 5	U.S. Border Patrol Apprehension Statistics Since FY 2000
Ex. 6	CBP Transcript March FY19 Year to Date Statistics (April 10, 2019)
Ex. 7	President Donald J. Trump's Border Security Victory (Feb. 15, 2019)
Ex. 8	Declaration of Kenneth Rapuano, Assistant Secretary of Defense for Homeland Defense and Global Security (April 25, 2019)
Ex. 9	Fiscal Year 2020 Military Construction Bill, H.R. __, (April 30, 2019), at https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109390
Ex. 10	Reprogramming Application & Congressional Approvals, Sept. 2007
Ex. 11	Reprogramming Application & Congressional Approvals, Sept. 2006

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES HOUSE OF
REPRESENTATIVES,

Plaintiff,

v.

STEVEN T. MNUCHIN in his official capacity as
Secretary of the Department of Treasury, *et al.*,

Defendants.

Civil Action No. 1:19-cv-00969 (TNM)

[Proposed] ORDER

Upon consideration of Plaintiff's Motion for Preliminary Injunction (ECF No. 17), and
Defendants' opposition thereto, it is hereby

ORDERED, that Plaintiff's motion is DENIED.

Dated: _____, 2019

TREVOR N. McFADDEN
United States District Judge

General Information

Court	United States District Court for the District of Columbia; United States District Court for the District of Columbia
Federal Nature of Suit	Other Statutory Actions[890]
Docket Number	1:19-cv-00969